

EXHIBIT 2

**Depo-O'Donnell V Gonzales, 04-40190-FDS - Depo of David Winn -
09/15/05**

APEX Reporting

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**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

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[1] 1 - 170
 [2]
 [3] IN THE UNITED STATES DISTRICT COURT
 [4] FOR THE
 [5] DISTRICT OF MASSACHUSETTS
 [6]
 [7]
 [8] COLLEEN O'DONNELL.)
 [9] Plaintiff.)
 [10] -v-) CIVIL ACTION NO.
 [11] ALBERTO R. GONZALES.) 04-40190-FDS
 [12] Attorney General.)
 [13] U.S. Department of Justice.)
 [14] Defendant.)
 [15]
 [16] THE ORAL DEPOSITION OF DAVID L. WINN,
 [17] held pursuant to Notice, and the applicable provisions of
 [18] the Federal Rules of Civil Procedure, before Marilyn
 [19] Franklin, a Court Reporter and Notary Public, within and for
 [20] the Commonwealth of Massachusetts, at FMC Devens,
 [21] Ayer, Massachusetts, Massachusetts, on Thursday, September
 [22] 14, 2005, commencing at 10:04 a.m.
 [23]
 [24]
 [25]

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[1] PRESENT:
 [2] On Behalf of the Plaintiff:
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 [4] Cooley, Shrair P.C.
 [5] 1380 Main Street, Fifth Floor
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 [7] (413) 735-0750
 [8] On Behalf of the Defendant:
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 [11] U.S. Attorney's Office
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 [14] (617) 748-3100
 [15] KELLY L. McDONALD, ESQ.
 [16] Assistant General Counsel
 [17] Federal Bureau of Prisons
 [18] ALSO PRESENT:
 [19] Colleen O'Donnell
 [20]
 [21]
 [22]
 [23]
 [24]
 [25]

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STIPULATIONS

[1] IT IS HEREBY STIPULATED AND AGREED TO,
 [2] by and between the parties and their
 [3] respective attorneys, that all
 [4] objections, except as to the form of the
 [5] questions, shall be reserved until the
 [6] time of trial; that the filing of the
 [7] deposition be waived; and, that the
 [8] witness may read and sign the deposition
 [9] without any Notary Public being present.
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[1] PROCEEDINGS
 [2] (10:04 a.m.)
 [3] MS. MCDONALD: Good morning, Warden. My name is
 [4] Dawn McDonald and I am the attorney for Colleen O'Donnell
 [5] for the matter now pending in Federal Court with regard to
 [6] discrimination claims and retaliation claims.
 [7] I am going to ask you a number of questions today [8] and I
 [9] just want to go over some ground rules before we [9] begin.
 [10] MR. WILMOT: Have you sworn in the Warden yet?
 [11] MS. MCDONALD: Oh, sorry.
 [12] DAVID L. WINN, Sworn
 [13] MS. MCDONALD: Damian, usual stipulations?
 [14] MR. WILMOT: Yes.
 [15] MS. MCDONALD: Waive the notary. Okay, first [16] ground
 [17] rule is please respond verbally because the [17] stenographer
 [18] cannot take down a shake or a nod of the head [18] or a gesture.
 [19] THE WITNESS: Okay.
 [20] MS. MCDONALD: Please allow me to finish my
 [21] question before you answer even if you think you know what
 [22] the answer is going to be or if it is apparent what I am
 [23] asking.
 [24] It just makes it clearer on the record and easier [25] for the
 [25] stenographer to take down your testimony.

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[1] THE WITNESS: Okay.
 [2] MS. MCDONALD: If you don't understand a question, [3] let
 [4] me know and I'll be happy to rephrase it. If you need [4] to take a
 [5] break, let me know that.
 [6] THE WITNESS: Okay.
 [7] MS. MCDONALD: We can accommodate that.
 [8] EXAMINATION BY MS. MCDONALD:
 [9] Q Please state your name and position here at FMC
 [10] Devens?
 [11] A David L. Winn, Warden.
 [12] Q And have you reviewed any documents to prepare for
 [13] your testimony today?
 [14] A Yes I have.
 [15] Q What documents did you review?
 [16] A The information that the attorneys have. The
 [17] documents that the attorneys have which, I don't know, all
 [18] the documents that you requested, they requested. That's
 [19] what I reviewed.
 [20] Q That's a lot of documents.
 [21] A Yeah.
 [22] Q Okay. Did you review your Answers to
 [23] Interrogatories?
 [24] A Yes I did.
 [25] Q Okay. And did you review the Complaint? The
 [25] Plaintiff's Complaint in this matter?

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[1] A Yes I did.
 [2] Q Okay. Are you currently other any medications [3] that
 [4] would impair your memory or ability to testify today?
 [5] A No.
 [6] Q How long have you been employed by the Federal
 [7] Bureau of Prisons?
 [8] A Approximately thirty-two years.
 [9] Q And starting from the beginning of your [9] employment,
 [10] can you tell me the course of your employment [10] throughout
 [11] your thirty-two years?
 [12] A If I can remember. Let's see in 1973, I joined [12] the
 [13] Bureau of Prisons as a correctional officer at [13] Englewood,
 [14] Colorado. Approximately 1977, I was promoted to [14] counselor.
 [15] Q And what type of job is a counselor?
 [16] A A counselor, you have a case load of approximately
 [17] 120 inmates that you are seeing, giving guidance and help.
 [18] Q Okay.
 [19] A Then in 1984, I was transferred to Philadelphia, [20] PA
 [21] as a community corrections trainee.
 [22] Q And what does that mean?
 [23] A You have oversight; you are in training to be a
 [24] community corrections managers for halfway houses.
 [25] Q Okay.
 [25] A For the Northeast region.

[1] Q Okay.
 [2] A Four months later, I was promoted to actually,
 [3] community corrections manager here in Boston. That was in
 [4] 1987. Excuse me, 1985. In 1987, I was promoted to
 [5] community corrections administrator for the Northeast from
 [6] 1987 to 1990.
 [7] From 1990 to 1997, I was Associate Warden at [8] Otisville,
 New York.
 [9] Q A Social Warden?
 [10] A Associate.
 [11] Q Oh, associate.
 [12] A Warden. From 1997 to 1999, I was Associate Warden
 [13] at Chicago, MCC Chicago, Illinois. Approximately that time.
 [14] Q Okay.
 [15] A In that same year, I was promoted Warden at FCIP [16] in
 Illinois. Give or take a month in between there. And [17] December
 2000, I was promoted or lateralled to Warden here [18] at Devens.
 [19] Q What was the year that you came here again?
 [20] A 2000. December 1, 2000.
 [21] Q And can you tell me about your education?
 [22] A I don't have a degree. I have two years of [23] college.
 [24] Q Okay. And where did you go to college?
 [25] A Rockland Community College.

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[1] Q And where is that?
 [2] A Littleton, Colorado.
 [3] Q Can you tell me briefly, I know you have a lot of
 [4] responsibilities but can you tell me, kind of generally, [5] what
 your responsibilities as the Warden are?
 [6] A I'm responsible for the care, custody and [7] treatment of
 approximately 1250 inmates. With approximately [8] an oversight
 of approximately 450 staff with a budget of [9] approximately 50
 million dollars.
 [10] Q And can you be a little bit more specific with [11] regard
 to your duties of oversight of the staff.
 [12] A Well, I'm responsible to make sure that they come [13] to
 work, they leave on time, they actually do their job.
 [14] I oversee performance issues, discipline issues, [15] and I
 insure that the staff members don't violate the [16] inmates' rights.
 That's probably one of my biggest [17] responsibilities.
 [18] Q Okay.
 [19] A And if they do, I intervene.
 [20] Q Okay. So are you pretty much apprised of any
 [21] current issues that are going on in the institution at any
 [22] given time?
 [23] Do your, let me explain a little more. Do your [24] supervisors
 report to you regularly on any staff issues, [25] performance issues
 or disciplinary issues as they rise?

[1] A Yes they do.
 [2] Q Okay. Can you explain the disciplinary issue that [3] you
 follow here at Devens?
 [4] A If a staff member were to make an allegation or an
 [5] inmate would make an allegation, I'm obligated to ensure
 [6] that allegation is processed properly in accordance with
 [7] Bureau policy.
 [8] Q And when you say process properly, what do you
 [9] mean by that?
 [10] A Well, for example, if a staff member were to make [11] an
 allegation against another staff member, I have to report [12] that
 to the Central Office for review.
 [13] If it's a Category Two or a Category Three, excuse [14] me,
 Category One or Category Two case. If it's a
 [15] Q Let me interrupt you. What is a Category One and [16] a
 Category Two?
 [17] A Category One and Category Two case is a pretty
 [18] serious case. It could be a civil rights violation against [19] an
 inmate or it could be a staff member that is convicted of [20] a
 felony or it could be a staff bringing in contraband.
 [21] Those cases are handled at the Central Office [22] level.
 Category Three is a minor violation in the Bureau's [23] eyes in my
 opinion. It would be a DUI, an AWOL, something [24] minor to that
 effect.
 [25] Q And those are handled within the institution?

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[1] A Locally. But I still have to make a report on [2] those
 Category Threes every month.
 [3] Q Okay. And I interrupted you. I don't remember [4] where
 you were but you were telling me you have to report [5] Category
 Ones and Category Twos to central office.
 [6] A Correct.
 [7] Q And then I interrupted you.
 [8] A Well, I report that. They make a determination if [9] it is a
 Category One or if it is a Category Two and if it [10] goes to
 Central Office, they make the determination and they [11] do the
 investigation.
 [12] If they return it to me, refer it back to me as a [13] Category
 Three, then it's my job to do the investigation.
 [14] Q And do you have any discretion in determining, in
 [15] making that determination?
 [16] A Only on Category Three cases.
 [17] Q Okay. Is that the same disciplinary procedure [18] that
 followed in other federal prisons?
 [19] A Yes.
 [20] Q Within the Bureau prisons, that's the policy?
 [21] A Yes.
 [22] Q Not any deviations from that policy?
 [23] A Not that I'm aware of, no.
 [24] Q Okay. Now on a Category Three issue, once the
 [25] determination is made that it's a Category Three, what is

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[1] the next step that you take?

[2] A The next step I'm going to take is that I'm going [3] to call my special investigative agent up to my office, he [4] is already aware of it anyway because he's the one who's [5] going to report to the Central Office whether we do a [6] referral process.

[7] So he is pretty much aware of the Category Three. [8] And I'm going to tell him to proceed to investigate that [9] Category Three in hopefully, sixty days.

[10] Q And is there only one of these officers that does [11] the investigation?

[12] A There is only one officer that does staff cases [13] and there is another lieutenant that will do inmate cases, [14] If an inmate makes an allegation against another inmate.

[15] Q And who is the officer that does the staff

[16] investigations?

[17] A That would be Darren Brown.

[18] Q And who is -

[19] A As of today.

[20] Q As of today?

[21] A Yeah.

[22] Q And prior to today, who did those investigations?

[23] A Well, prior to today, it's always been Darren [24] Brown for approximately, the last two years.

[25] Q Okay. How come you said as of today?

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[1] A As of today. As of today, he -

[2] Q Okay.

[3] A Doing the investigations.

[4] Q Okay. And who does the inmate investigations?

[5] A That's Al Colon.

[6] Q Now you're familiar with the incident that [7] occurred between Officer David Reynoso and Colleen O'Donnell [8] on April 8, 2002?

[9] A Yes I am.

[10] Q And we're going to skip around a little bit but [11] since we're on the subject, Darren Brown did not do that

[12] investigation, did he?

[13] A No he did not.

[14] Q And was that a Category Three incident?

[15] MR. WILMOT: Objection. You can answer. You can

[16] answer.

[17] THE WITNESS: Okay. It was referred that same day

[18] and I think they categorized that as a Category One,

[19] Category Two. I'm not quite sure. However, they did refer

[20] that back to me back in May of that year, if I remember

[21] correctly.

[22] BY MS. MCDONALD:

[23] Q And when you say they, you mean the Central

[24] Office?

[25] A Right.

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[1] Q And -

[2] A But it still could have been a Category One or [3] Two, however, they would allow me, they made the decision to [4] allow me to do the investigation.

[5] Q Okay. And did you object to that decision?

[6] A Yes I did.

[7] Q And what were the reasons you objected?

[8] A Because I thought it would be a conflict of [9] interest.

[10] Q And why did you think that?

[11] A Because Mr. Reynoso worked in the SIS shop in the

[12] department and I objected, I didn't object, I requested that

[13] they do the investigation based upon the fact, that he was

[14] part of the investigative process.

[15] He worked there, he did investigate. But he [16] worked in the shop.

[17] Q So SIS is the department that handles

[18] investigations?

[19] A Correct.

[20] Q And what does SIS stand for?

[21] A Well, it's special investigative supervisor.

[22] Q Okay. So did David Reynoso work under Darren

[23] Brown?

[24] A Yes he did.

[25] Q So Darren Brown was his supervisor?

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[1] A That's correct.

[2] Q So you asked them, the Central Office, to conduct [3] the investigation?

[4] A Yes I did.

[5] Q And did they agree?

[6] A Yes they did.

[7] Q And who conducted the investigation?

[8] A Brian Ross.

[9] Q Okay, I'm going to leave that subject for the [10] moment. And I want to go back to talking about the [11] disciplinary process.

[12] A Okay.

[13] Q Once you assign somebody to investigate for a [14] staff incident, for example, Darren Brown, assuming he is

[15] investigating a staff incident?

[16] A Okay.

[17] Q What are the procedures he follows in conducting

[18] his investigation?

[19] A You would have to ask him.

[20] Q You don't know what the procedures are?

[21] A No.

[22] Q There are not standard procedures that they [23] follow?

[24] A It all depends, well, I'm not the investigator. I [25] may have a different procedure than on how he investigates,

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[1] so you would have to call him in.
 [2] Q So there are no specific procedures as to how an
 [3] investigation should be conducted?
 [4] A No, not that I'm aware of.
 [5] Q Okay. So once he finishes his investigation, does [6] he
 make recommendations or drafts a report?
 [7] A He drafts a report.
 [8] Q And who does his report go to?
 [9] A It goes to me.
 [10] Q I've seen in some of the documentation here and
 [11] some of the investigations that Captain Bollinger -
 [12] A Correct.
 [13] Q Makes recommendations to you?
 [14] A He may have. Most likely, he would not. He would
 [15] sign off on it. Signed off by certain people. For example,
 [16] the Captain does sign off on those investigations and so
 [17] does the Associate Warden Programs. So I know they've seen
 [18] them before I do only to make corrective errors, grammatical
 [19] errors, corrected before I get the report.
 [20] Q Okay. So Darren Brown's report doesn't always go
 [21] directly to you?
 [22] A No.
 [23] Q Sometimes it makes a stop in between.
 [24] A It stops at the Captain and Associate Warden
 [25] Programs.

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[1] Q Okay. So then, it is no longer his report at that [2] point?
 Do they make their grammatical changes and then put [3] their
 name on it?
 [4] A Actually that report belongs to the Office of [5] Internal
 Affairs.
 [6] Q Okay.
 [7] A The actual report. Which is Darren Brown. He
 [8] represents the Office of Internal Affairs. The Central [9] Office.
 [10] Q Okay.
 [11] A So it's actually their report.
 [12] Q Okay. So once you get the report, then what do [13] you
 do?
 [14] A I review the report and look at the affidavits and
 [15] make a decision whether there's going to be discipline to
 [16] follow or if it's not sustained, I go with what the
 [17] investigator reports to me.
 [18] I don't think in my career, I've ever changed one [19] of those
 reports.
 [20] Q Okay.
 [21] A Because I want it independent.
 [22] Q And you said you look at affidavits?
 [23] A Correct.
 [24] Q So is it part of the investigative process for [25] them to
 take affidavits?

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[1] A Yes it is.
 [2] Q From witnesses or parties involved?
 [3] A Yes.
 [4] Q Do you look at anything else other than the
 [5] investigative report in determining what discipline you're
 [6] going to hand out to an employee who may have committed a
 [7] wrong?
 [8] A Basically I make my decisions based on the [9] affidavits.
 [10] Q Just what the investigator hands you?
 [11] A Correct.
 [12] Q You don't look in personnel files or at any other
 [13] documentation?
 [14] A No.
 [15] Q Would prior disciplinary information be contained [16] in
 the report that is given to you by the investigator?
 [17] A No.
 [18] Q So they don't, the investigators don't typically [19] look at
 past disciplinary actions either?
 [20] A No.
 [21] Q Is the policy, the FBOP, do you understand what I
 [22] mean when I say FBOP?
 [23] A Yes.
 [24] Q Is their disciplinary policy, what's called the
 [25] Progressive Disciplinary Policy?

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[1] A I don't know if there's a Progressive Disciplinary [2] Policy.
 You do take progressive discipline to change one's [3] behavior. I
 do agree with that.
 [4] Q Okay. Let me explain what I mean by Progressive
 [5] Discipline.
 [6] A Okay.
 [7] Q So we don't get confused. For example, if a [8] person, a
 staff member commits a Category Three offense and [9] they
 receive a written warning and the next time, they [10] commit a
 Category Three offense, perhaps would they get [11] another
 warning or would it be a more, suspension?
 [12] And the next time, would there be, you know, I [13] guess,
 increasingly severe levels of discipline it's what I [14] mean by a
 progressive disciplinary policy.
 [15] A Right.
 [16] Q Do you have that or-?
 [17] A Yeah, I think we have that. I think that if [18] you've got a
 Category Three, for example, of an AWOL, it all [19] depends on
 the circumstances of that AWOL.
 [20] And then you get another AWOL, it would depend on [21] the
 circumstances of that AWOL. What the discipline would [22] be.
 [23] Q And would the prior AWOL be taken into account, if
 [24] a person had a second AWOL?
 [25] A It would be if it was in the two year reckoning

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[1] period.
 [2] Q Okay. What's the two year reckoning period?
 [3] A Well, if somebody would get, if an individual [4] would get disciplined today, and I give, excuse me, if they [5] commit offense today and I give them discipline tomorrow, [6] there's a two year reckoning period that I would have to [7] look at that case and based upon that reckoning period, what [8] my discipline would be.
 [9] It's my decision whether I would do progressive. [10] Give them the same discipline or well, do progressive [11] discipline.
 [12] Q Okay. But you have a great deal of discretion in [13] making that determination?
 [14] A Yes and no. I do have the discretion of making [15] once the proposal is given to me on the discipline; it is [16] reviewed by the regional and central office. It's Central [17] Office or Region that would disagree with the amount of [18] discipline and if they think it's inappropriate, they would [19] advise me that it's inappropriate discipline and usually [20] when they do that, I go along with the recommendation.
 [21] Q Okay.
 [22] A But I'm the final authority when I do give the [23] discipline.
 [24] Q Okay. And so, if it's, is it fair to say if a [25] person hasn't receive more than one discipline in the two

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[1] year reckoning period that you do look at prior disciplines [2] in determining what punishment they're going to receive?
 [3] A I don't. No, I don't.
 [4] Q Okay. Well, I'm confused then.
 [5] A There is progressive discipline in the Bureau [6] prisons.
 [7] Q Okay.
 [8] A Do I? I give discipline based upon the present [9] case.
 [10] Q Okay. So if a person had an AWOL today and then [11] next week had another AWOL, and you need to discipline them, [12] would you look at the first one or would you only go on the [13] facts of the second one?
 [14] A I would probably look at the first one as why but [15] I'm going to deal with the discipline on the present one.
 [16] Q Okay. I believe and correct me if I'm wrong, have [17] a number of different files where you keep employee records [18] here, is that correct?
 [19] A Well, the only file I know on employees other than [20] the employee files, would be the performance log that the [21] supervisors keeps on his staff members and a Human Resource [22] file. And if somebody had a discipline issue, then there [23] would be a file down in the SIS shop.
 [24] Q Okay. So there could be potentially three files [25] where employees, where information about employees could be

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[1] in this facility, be maintained?
 [2] A That is correct.
 [3] Q And this disciplinary file is separate from a [4] personnel file?
 [5] A Yes.
 [6] Q And when a person applies for a job here, I saw [7] from all the documents that there are a number of things [8] that they need to fill out in order to obtain employment [9] here?
 [10] A Correct.
 [11] Q And where are those documents maintained?
 [12] A Those would be in Human Resource Department.
 [13] Q Okay. And it's standard procedure that the FBOP [14] do background checks on employees who apply to work here?
 [15] A Yes they do.
 [16] Q And where are those maintained?
 [17] A Human Resource Department.
 [18] Q And would those also be in the personnel file? [19] The background checks?
 [20] A Yes. The only reason I'm answering that question [21] is that there might be a file in Texas that I'm unaware of [22] where they keep a personnel file based upon the background [23] checks.
 [24] You know, I don't know that for a fact, I just [25] know what files we have.

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[1] Q So do you have the background checks for all of [2] the employees who--?
 [3] A Yes.
 [4] Q Who have applied for work at this facility?
 [5] A Yes.
 [6] Q What procedures does an applicant for employment [7] go through in order, what is the application process?
 [8] Let me put it that way.
 [9] A Well, I'm not an expert at that. Just, they fill [10] out an application, we do an interview. They have to go [11] down to the hospital for a urinalysis test and they have to [12] clear the background.
 [13] Q Okay.
 [14] A That's pretty much, that's pretty much in my mind, [15] excuse me, in simple terms, my knowledge of the procedure.
 [16] Q Okay. Do you know if they have to do a physical [17] fitness test as well?
 [18] A Down in Glynnco they do. Once they're employed by [19] the Bureau of Prisons.
 [20] Q And Glynnco was the training facility?
 [21] A Right.
 [22] Q And what state is that in? Georgia?
 [23] A Georgia.
 [24] Q Why do they require a background check for [25] applicants?

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[1] MR. WILMOT: Objection. You can answer.
 [2] THE WITNESS: Well, they do a background check to [3] see if number one, if the employee is telling the truth. If [4] there would be any prior convictions. If they meet certain [5] guidelines. Do I know all those guidelines? No I don't. [6] But there are certain guidelines that the employee would [7] have to meet.
 [8] BY MS. MCDONALD:
 [9] Q And do you know whether these guidelines and
 [10] possibly one of the reasons for the background check is
 [11] because these individuals will be working with inmates?
 [12] Is that part of the reason the background check is
 [13] conducted?
 [14] MR. WILMOT: Objection. You can answer.
 [15] THE WITNESS: Well, I think the background check [16] is done to make sure the employee is telling the truth.
 [17] BY MS. MCDONALD:
 [18] Q Okay.
 [19] A On their application.
 [20] Q Is there anything on a background check that would
 [21] be, what I'm going to call a red flag. That the person may
 [22] still be allowed to become an employee here that would
 [23] maybe [23] be a note of caution that you would pay attention to in
 [24] hiring somebody?
 [25] A Well, I guess if a person said that they didn't

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[1] use drugs and we find out they did use drugs, that could be
 [2] a problem.
 [3] Q Would you hire that person?
 [4] A No.
 [5] Q And if an applicant stated on his application that [6] he had been arrested for some offense but not convicted, [7] would you hire, would you still be able to hire that person?
 [8] A Well, I would get advise first by the Human [9] Resource manager. What the guidelines are and do they meet [10] the guidelines and would there be any waivers involved.
 [11] Q Okay.
 [12] A But I would make the final decision on whether a
 [13] waiver would be forwarded to the Regional Director.
 [14] Q And when you say a waiver, what do you mean by
 [15] that?
 [16] A If it was a minor offense, told the truth, but it [17] was a minor offense but, then I would probably request a [18] waiver.
 [19] Q From whom?
 [20] A From the Regional Director.
 [21] Q I see. Is there a policy at the FBOP and [22] specifically, at Devens, that all employees have to have the [23] ability to use physical force, possibly including deadly [24] force if there were, in order to maintain control over the [25] inmates?

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[1] A Is there a policy in place?
 [2] Q Yes.
 [3] A Yes. Have I waived that for pregnant females or
 [4] someone with a doctor's note, yes.
 [5] Q And you're able to waive that policy?
 [6] A For a period of time.
 [7] Q What's time period of time?
 [8] A Until they get cleared by their doctor. That [9] would be an example.
 [10] Q Okay. So you only have the ability to waive that
 [11] policy for medical reasons?
 [12] A I could waive it for other reasons.
 [13] Q Okay. So you have some discretion?
 [14] A I have a little bit of discretion. Correct.
 [15] Q Okay. Is that policy barring the medical issues, [16] a pregnant female or somebody that is perhaps on Workers
 [17] Comp and he has light duty, is that policy a condition of
 [18] any correctional officer's employment here?
 [19] A Repeat the question.
 [20] Q Okay. You said that there's a policy that any
 [21] correctional officer here has to be able to use physical
 [22] force in order to control inmates?
 [23] A Correct.
 [24] Q You also said that you had the ability to waive [25] that in certain circumstances?

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[1] A For short periods of time, that's correct.
 [2] Q Okay. Barring any waivers, is that policy a [3] condition of any correctional officer's employment?
 [4] A Yes.
 [5] Q And does the policy require that the employee have
 [6] the ability to use a firearm?
 [7] A Yes it does.
 [8] Q Okay. Can you explain the Administrative Leave [9] Policy to me?
 [10] A The Administrative Leave Policy?
 [11] Q Yeah.
 [12] A I can grant administrative leave. I'm the only [13] person in the institution that allows administrative leave [14] to be granted by me. Administrative leave would be given to [15] an employee since I'm the granting authority, I would [16] determine how, I can only give so much administrative leave [17] in a period of time.
 [18] It would be on the individual's request to me what [19] the reasons would be for administrative leave.
 [20] Q What is the, I guess, largest amount of [21] administrative leave that you're allowed to grant?
 [22] A Up to ten days.
 [23] Q Okay. And you have a certain amount of discretion
 [24] in determining whether the reason for administrative leave
 [25] is valid or invalid and what you may grant administrative

[1] leave for?

[2] A Repeat the question.

[3] Q Can you grant administrative leave for any reason?

[4] A For any reason? I could. Pretty much.

[5] Q But clearly, you would have to believe that it was [6] a valid reason but--?

[7] A Yeah.

[8] Q As long as you considered it a valid reason, you [9] could grant it for any reason at all?

[10] A Yes.

[11] Q Are there any responsibilities placed on an [12] individual who is out on administrative leave?

[13] A Only if I put stipulations. Since I'm the [14] granting authority, there could be stipulations in granting [15] that administrative leave?

[16] Q And what would be a reason that you would put [17] stipulations on it?

[18] A A good example would be if an employee had a [19] medical problem and if the employee used all of their sick [20] leave and annual leave, and including abusing the annual [21] leave or sick leave, then I would take a look at that and I [22] would put in writing or I may do it verbally, I would grant [23] the administrative leave and I would put some stipulations [24] in that.

[25] Q What kind of stipulations?

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[1] A That you could stay, you know, I'm going to grant [2] you administrative leave, but you need to call in to your [3] supervisor occasionally to ensure that one, that you know [4] when the administrative leave expires.

[5] It could be given some type of direction to the [6] employee.

[7] Q Okay. Would they have to call on a daily basis [8] or--?

[9] A If I put that in the stipulation.

[10] Q And you've done that?

[11] A Yes I have.

[12] Q Put the stipulations on people before?

[13] A I've put that on a person before?

[14] Q Which person?

[15] A Ms.O'Donnell.

[16] Q She's the only person you've put that stipulation [17] on?

[18] A That's correct.

[19] Q When did you first meet Ms.O'Donnell?

[20] A I guess the year I walked in here. The year 2000.

[21] Q She was already working here at that time?

[22] A Well, I'm not certain of the exact date. 2000, [23] 2001.

[24] Q Okay. And do you know what her job position was [25] at the time?

[1] A As far as I'm concerned, she worked in the inmate [2] system, the inmate ISN Department and she was an inmate [3] specialist or in the Record Department.

[4] Do I know her exact job title at that time? No.

[5] Q Okay. And do you know whether her job has changed [6] substantially since 2000, 2001 to the present?

[7] Has she changed posts or changed --?

[8] A Well, they rotate down there.

[9] Q Okay, post is the wrong word. Has she changed [10] departments or has she been in the same department since [11] 2000, 2001?

[12] A That is correct.

[13] Q And as far as you know, has she always performed [14] her job duties in an acceptable and satisfactory manner?

[15] A Yes she has.

[16] MS. O'DONNELL: Excuse me, I'm just going to go to [17] the ladies' room, okay?

[18] MS. MCDONALD: Okay. Take a quick break.

[19] (Off the record at 10:40)

[20] (On the record at 10:48)

[21] BY MS. MCDONALD:

[22] Q Okay, from the beginning of Ms.O'Donnell's [23] employment up until she was disciplined for being AWOL, [24] which was on or about December of 2003, I believe.

[25] A Okay.

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[1] Q Had she ever been disciplined for any reason?

[2] A Not that I recall.

[3] Q To the best of your knowledge, is the discipline [4] that she received for being AWOL, the only discipline she [5] has ever received?

[6] A Yes.

[7] Q And that discipline was a written warning placed [8] in her personnel file, is that correct?

[9] A Yes.

[10] Q And the original recommendation was that Colleen, [11] Ms.O'Donnell, be suspended for thirty days, is that [12] correct?

[13] A I don't remember the original.

[14] Q Do you recall whether it was more than a written [15] warning? The recommended discipline?

[16] A There was more discipline proposed. However, [17] based upon her situation, her medical situation, I reduced [18] it.

[19] Q Okay. Were you aware that Ms.O'Donnell and David [20] Reynoso were dating in 2002?

[21] A No.

[22] Q When did you become aware that they had a dating [23] relationship?

[24] A April 8, 2002.

[25] Q And have you ever seen the background check

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[1] conducted on David Reynoso?
 [2] A Yes I have.
 [3] Q And do you recall what his background check
 [4] revealed?
 [5] A I think there was an issue of just debts.
 [6] Q Anything else?
 [7] A Not that I recall.
 [8] Q Did it reveal an arrest for assault and battery [9] with a
 dangerous weapon?
 [10] A Not that I recall.
 [11] Q Have you ever seen David Reynoso's application for
 [12] employment?
 [13] A At one time, I reviewed it. The date of review, I
 [14] couldn't tell you.
 [15] (Exhibit No. 1 marked for [16] identification.)
 [17] BY MS. MCDONALD:
 [18] Q Okay. I am going to show you this document? Do
 [19] you recognize this document?
 [20] A Do I recognize it?
 [21] Q Yes.
 [22] A No I don't.
 [23] Q You've never seen that document before?
 [24] A I may have but I don't remember it.
 [25] Q Do you know what this document is?

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[1] A It's a document from my understanding, I'm not an
 [2] expert at it, would give me information either that the
 [3] investigation has been cleared or not cleared.
 [4] Q Okay. And do you see the date on the bottom. [5] Would
 that represent when you received that document.
 [6] MR. WILMOT: Objection.
 [7] THE WITNESS: I wasn't here at that time.
 [8] (Exhibit No. 2 marked for [9] identification.)
 [10] BY MS. MCDONALD:
 [11] Q Okay. I am going to show you another document.
 [12] Can you describe that document?
 [13] A It's a reinvestigation and it closed out the
 [14] investigation on 7-30-04.
 [15] Q And what is the date on that document?
 [16] A March 31, 2005.
 [17] Q Do you know what investigation --?
 [18] A Excuse me, I can't tell if it's March 3rd or March [19] 31st.
 [20] Q Okay. Do you know what investigation that
 [21] document is referring to?
 [22] A No.
 [23] Q What would be a reason that another, an additional
 [24] background check would be conducted on an employee once
 he's [25] already hired?

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[1] A They do a five year background check.
 [2] Q And that's standard for all employees?
 [3] A That's correct.
 [4] Q So it's possible that was the five year background
 [5] check that you don't recall?
 [6] A That's possible.
 [7] (Exhibit No. 3 marked for [8] identification.)
 [9] BY MS. MCDONALD:
 [10] Q Okay. I am going to show you another document and
 [11] ask if you can take a look at that and state for the record
 [12] what that document is?
 [13] A I have no idea.
 [14] Q You don't know what this document is?
 [15] A No.
 [16] Q Now you testified a few moments ago that you had
 [17] reviewed Mr. Reynoso's application for employment at some
 [18] point in time, I believe, was your testimony.
 [19] Is this not his application for employment?
 [20] MR. WILMOT: Objection. You can answer.
 [21] THE WITNESS: Well, I reviewed his, you're asking [22] me
 if I know what that form is and the answer is no, I don't [23] know
 what that form is.
 [24] Is it part of the background, it could be, but I'm [25] not
 certain.

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[1] BY MS. MCDONALD:
 [2] Q Okay. You've never seen this form before?
 [3] A Not that I recall.
 [4] Q I am going to refer you to paragraph 8. If you [5] could
 read what paragraph states for the record.
 [6] A Paragraph 8?
 [7] Q Yes.
 [8] A "During the last ten years have you ever been
 [9] convicted, imprisoned, been on probation or been on parole?
 [10] Includes felonies, firearms, explosive violations,
 [11] misdemeanors and all other offenses. If you answered yes to
 [12] Item 15, you need to provide the date, explanation of the
 [13] violation and place of occurrence, and names and addresses
 [14] of the police department or court involved."
 [15] MR. WILMOT: For the record, I just want to state [16] the
 right side of this document is support copy, I guess. [17] So, it's
 hard to read anything in the right margin of the [18] document.
 [19] MS. MCDONALD: Yeah. And I won't ask him anything
 [20] about the right margin.
 [21] MR. WILMOT: All right.
 [22] MS. MCDONALD: That's how the copy was that I got.
 [23] BY MS. MCDONALD:
 [24] Q So this is, paragraph 8 states that any yes [25] answers
 should be explained in Item 15. So I am going to

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[1] refer you to Item 15 on the second page and first let me ask
 [2] you, does that document if I represent to you that document
 [3] is the declaration for federal employment for David Reynoso,
 [4] would you agree with that?
 [5] A Repeat the question.
 [6] Q If I represent to you that document is the [7] declaration
 for federal employment filled out by Mr. David [8] Reynoso, would
 you agree with that statement?
 [9] A Yes.
 [10] Q And under Item 15, does he explain a situation
 [11] which was asked about in paragraph 8?
 [12] MR. WILMOT: Objection. You can answer.
 [13] THE WITNESS: YES.
 [14] BY MS. MCDONALD:
 [15] Q And what does it state there?
 [16] A Arrested for assault and battery on May 3, 1991.
 [17] Case was brought before a judge on October of 1991. He
 [18] continued the case without a finding for one year. I was
 [19] ordered to report to probation, probation officer, where she
 [20] instructed me to report to her once a month. I was also
 [21] instructed to attend emergency, or I think it's emergency
 [22] classes, merge classes. When I went before the judge, he
 [23] later dropped all charges from the case and was dismissed.
 [24] The court was Lynn District Court, Essex County.
 [25] Q Were you ever aware of these facts as are stated

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[1] in this document?
 [2] A Was I aware of those?
 [3] Q Yes.
 [4] A Not that I recall. No.
 [5] Q Okay. Now I understand that in May of 1998, you [6] were
 not the Warden at this facility? Is that correct?
 [7] A Correct.
 [8] Q But let me ask you a hypothetical question. Were [9] an
 individual to apply for employment, and state these facts [10] as
 they are stated in this document, is this an individual [11] that you
 would hire for employment at this facility?
 [12] A Well, number one, I don't know the rules or
 [13] guidelines on a continuation without a finding. From my
 [14] understanding continuation without a finding doesn't mean
 [15] that he was found guilty or innocent.
 [16] That's a hypothetical question. I don't know what [17] the
 guidelines are, I would have to refer -
 [18] Q So you would make a phone call on something like
 [19] this?
 [20] A I would refer back to my Human Resource manager
 [21] for advice.
 [22] Q Okay. And you testified earlier that there may be
 [23] circumstances where you would request a waiver from I
 [24] believe you said, the Central Office.
 [25] A Region Director.

[1] Q Regional Director. Is this possibly a [2] circumstance that
 you would have requested a waiver?
 [3] MR. WILMOT: Objection. You can answer.
 [4] THE WITNESS: I don't know. I've never had that [5] brought
 before me as a warden on something like that.
 [6] BY MS. MCDONALD:
 [7] Q Okay. In your many number of years as a warden [8] and
 thirty-two years working for the Bureau of Prisons, can [9] you
 state whether this is something that you may call for a [10] waiver
 on?
 [11] A If it wasn't, if it was a continuation of finding, [12] and
 there wasn't, he wasn't, that person wasn't found guilty [13] or
 innocent, to be honest with you, I don't know if I would [14] or I
 wouldn't.
 [15] Q Okay.
 [16] A I may have. I mean, I may -
 [17] Q You would have to look into the facts and
 [18] circumstances?
 [19] A Pretty much, yes.
 [20] Q Okay. When did you first become aware of the [21] April
 8, 2002 incident?
 [22] A On that particular day, I was sitting in my [23] office.
 Approximately 11 a.m. or 11, between 11 a.m. and [24] 11:30, I
 received a call from Steve Gagnon indicated that [25] there had
 been an incident involving two staff members down

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[1] at Mirror Lake and that Ms. O'Donnell was coming to my
 [2] office.
 [3] Q And when she got to your office what did she say [4] to
 you?
 [5] A As she was coming up to my office, I called [6] Ms. Lord,
 Human Resource Manager, to come in and when [7] Ms. O'Donnell
 got there she advised me of an alleged assault [8] that involved
 another staff person. And I asked who that [9] staff person was,
 and she mentioned Mr. Reynoso.
 [10] She said she didn't know what to do. I asked her [11] if she
 needed medical attention and she stated no, I don't [12] need
 medical attention. I asked her what occurred and she [13] advised
 me that her and Mr. Reynoso got in an argument and [14] that
 Mr. Reynoso allegedly assaulted her.
 [15] She also mentioned and I'm sure I asked a couple
 [16] questions but I don't recall what I asked, I asked her, well
 [17] she advised me that there was a policeman in their proximity
 [18] and I, I would also bet my money, that I asked her if she
 [19] went to that police officer for assistance and she didn't
 [20] request assistance from that police officer.
 [21] I know I asked her on a couple of occasions, are [22] you set
 you don't want to go down to the medical to get [23] assessed of
 any injuries and she said no.
 [24] And then I advised her, she asked me what to do. [25] I said,
 well, you need to file a police report. You need to

[1] go down to the State Police and file a police report because
 [2] the subject came up whether it was on duty, whether it was
 [3] on government property or not. I don't know if I brought it
 [4] up, I can't remember if Ms.O'Donnell brought it up. But it
 [5] came up that it was off government property and it was
 [6] during both individual's lunch break.
 [7] So at that time, I said, I think I gave her admin [8] leave for the
 day. I had a staff member, I asked her if she [9] wanted a staff
 member to go with her to report it and I [10] don't know if she said
 yes or no, I can't remember that on [11] that day.
 [12] Later on, I found that a staff member did go with [13] her. She
 did report it.
 [14] I notified my Regional Director of the incident [15] because it
 dealt with an alleged assault. Staff on staff. [16] I gave him the
 information that was provided to me by [17] Ms.O'Donnell.
 [18] I did request that both staff persons be placed on [19] home
 duty status.
 [20] Q Okay. Go ahead.
 [21] A The Regional Director at that time stated no, this
 [22] would not qualify for home duty status case.
 [23] Q Can you, let me interrupt you. Can you explain [24] what
 home duty status is?
 [25] A Home duty status would be that they would be

[1] (Pause)
 [2] MS. MCDONALD: Let me show you this document. [3] Take
 a look at that.
 [4] (Exhibit No. 4 marked for [5] identification.)
 [6] THE WITNESS: Okay.
 [7] BY MS. MCDONALD:
 [8] Q Do you recognize that document?
 [9] A Yes I do.
 [10] Q And what it is?
 [11] A It's the Workplace Violence Committee Meeting
 [12] Report to me.
 [13] Q And I think you mentioned they met a couple of
 [14] times. Do you know whether this is the first report or the
 [15] second report?
 [16] MR. WILMOT: Objection. You can answer.
 [17] THE WITNESS: I'm not sure if it was the first or [18] second
 time they met. They met in the afternoon and the [19] morning.
 [20] BY MS. MCDONALD:
 [21] Okay. And down towards the bottom of the page, [22] the
 Committee Recommendations.
 [23] A Yes.
 [24] Q It states that the committee decided to reconvene [25] on
 Tuesday, April 9th, at 9 a.m. to further consider the

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[1] placed at home during their scheduled shift with pay or
 [2] without pay and that would be their duty station.
 [3] Q So that's different than admin leave?
 [4] A Yes.
 [5] Q Okay. Go ahead, you can continue.
 [6] A Okay. After I notified my Regional Director, then [7] I
 conducted a work place violence committee-
 [8] Q You conducted it or you asked somebody to-?
 [9] A Well, I didn't conduct it. I gathered a committee [10] up
 [11] Q Okay.
 [12] A By policy in accordance with Bureau policy to [13] advise
 me whether workplace violence existed or not. I [14] gathered the
 staff that was outlined by policy and I may [15] have added a staff
 member or two to that policy.
 [16] I presented the chairperson, who was David Porter [17] and
 the people in the committee, the committee members, what [18] I
 was told by Ms.O'Donnell and that's all I did and I told [19] them to
 report back to me when they come up for some
 [20] recommendations or their review.
 [21] I mean, that day and then I guess they met the [22] next
 morning. They reviewed the information they had that [23] was
 provided by me, by Ms.O'Donnell and they provided me a
 [24] report.
 [25] Q Okay. Did you, actually let me find that report.

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[1] incident based on how the Mass State Police responded.
 [2] Do you see where it says that?
 [3] A Yes.
 [4] Q Is that the second meeting to which you were [5] referring
 to?
 [6] A This document, I don't know if they wrote them up [7] the
 same day, this must be the first time they met at.
 [8] Q Would it be safe to say that based on that [9] committee
 recommendations in this document, that at this [10] point in time,
 Mr.Reynoso had not yet been arrested?
 [11] MR. WILMOT: Objection. You can answer.
 [12] THE WITNESS: I don't know if he had been arrested [13] or
 not at that time.
 [14] (Exhibit No. 5 marked for [15] identification.)
 [16] BY MS. MCDONALD:
 [17] Q Okay. Let me show you this one.
 [18] A Okay.
 [19] Q Do you recognize that document?
 [20] A Yes I do.
 [21] Q And what is that document?
 [22] A Again, it is a Workplace Violence Committee [23] Meeting
 Minutes to me.
 [24] Q And what is the date?
 [25] A April 8th.

BSA

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[1] Q 2002?
 [2] A Correct.
 [3] Q And that's the same date as the previous report,
 [4] Exhibit 4 is it? Yeah.
 [5] Both those documents are dated the same?
 [6] A Correct.
 [7] Q They are a little bit different though. Let me [8] call your attention to the second paragraph of Exhibit 5. [9] Where it says the committee reconvenes.
 [10] MR. WILMOT: You mean Exhibit 4?
 [11] MS. MCDONALD: I think it's 5.
 [12] MR. WILMOT: We have it as 4.
 [13] MS. MCDONALD: Right here. Oh, Okay. Sorry.
 [14] MR. WILMOT: That's all right.
 [15] THE WITNESS: I'm sorry. What was the question?
 [16] BY MS. MCDONALD:
 [17] Q The second paragraph states that the committee
 [18] reconvened on Tuesday, April 2nd [sic] and they were
 [19] informed that Mr.Reynoso was arrested on April 8th.
 [20] Do you see that?
 [21] A Yes.
 [22] Q And down on committee findings, it states that the
 [23] committee does not believe this met the definition of
 [24] workplace violence.
 [25] Do you see that?

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[1] A Yes.
 [2] Q Do you know why they came to that conclusion?
 [3] A No.
 [4] Q And under committee recommendations, can you read
 [5] paragraph one?
 [6] A Which document?
 [7] Q Exhibit 4.
 [8] A Can I read it?
 [9] Q Yes. For the record.
 [10] A Committee was advised that since the charge
 [11] against Mr.Reynoso is a state felony, he would have to be
 [12] placed on indefinite suspension until the charges are
 [13] resolved.
 [14] Q Did you accept that recommendation?
 [15] A No.
 [16] Q Why?
 [17] A Because prior to this, I had already talked to the
 [18] Regional Director and advised him of the incident and he
 [19] advised me that he, Mr.Reynoso could not be placed on
 [20] home [20] duty status.
 [21] Q Okay. But that doesn't say home duty status, does
 [22] it?
 [23] A No it doesn't.
 [24] Q It says indefinite suspension.
 [25] A Indefinite suspension in my opinion, means the

[1] same thing as home duty status. I could not put him at
 [2] home. That's my definition of both of them. They're the
 [3] same.
 [4] Q After the Workplace Violence, did they have any [5] further functions? The Workplace Violence Committee. Did [6] they do, have any other responsibilities, once they gave you [7] that report?
 [8] A No.
 [9] Q They just gave you the recommendations and that's
 [10] the end of their job duties, I will call it?
 [11] A Correct.
 [12] Q Okay. And what else did you with regard to this
 [13] incident?
 [14] Did you order an investigation?
 [15] A Yes I did.
 [16] Q And why don't you explain to me the process you
 [17] took?
 [18] A Either that day or the next day, I reported the
 [19] incident to Central Office to open up an investigation of an
 [20] alleged assault on staff.
 [21] I think it was the next day that I also late in [22] the afternoon, got a restraining order which was included as [23] part of the investigation.
 [24] Q Who did you get the restraining order from?
 [25] A I don't recall.

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[1] Q Okay. And who was conducting the investigation?
 [2] A At that time?
 [3] Q Yes.
 [4] A There was no investigation being conducted.
 [5] Q Oh, okay.
 [6] A It was referred for investigation.
 [7] Q Okay.
 [8] A To Central Office, Office of Internal Affairs.
 [9] Q So nobody approached Mr.Reynoso and asked him for
 [10] his side of the story at this point in time?
 [11] A No.
 [12] Q And that's standard procedure?
 [13] A It's standard procedures, I follow that procedure [14] until an investigator would discuss the case and take [15] affidavits and an investigation would actually be initiated.
 [16] Q So do you recall when the investigation was [17] actually initiated?
 [18] A That, to the best of my recollection, it would be [19] after the disposition of the court case was finalized in [20] January of 2003.
 [21] Q So until that happened, until the beginning of the
 [22] investigation which I understand you don't recall, but it
 [23] could have been months before that investigation was begun?
 [24] A That's correct.
 [25] Q Okay. And so between April 8 of 2002 and the

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[1] beginning of the investigation, you don't really have to,
 [2] you're not obligated or required to do anything about
 [3] Ms.O'Donnell's allegations?
 [4] MR. WILMOT: Objection. You can answer.
 [5] THE WITNESS: I did several things to her [6] allegations. I
 held a Workplace Violence Committee. I [7] referred it by policy in
 a bureaucratic policy to the Office [8] of Internal Affairs.
 [9] Once I referred that case to the Office of [10] Internal Affairs,
 it's not in my hands, to do an [11] investigation. It's in the Office of
 Internal Affairs to do [12] the investigation.
 [13] BY MS. MCDONALD:
 [14] Q Did you, correct me if I'm wrong? Did you testify
 [15] earlier that Darren Brown was in the Office of Internal
 [16] Affairs?
 [17] A He's, he's in the Office, he's a special [18] investigation,
 special investigation agent. He's not in the [19] Office of Internal
 Affairs. Office of Internal Affairs is a [20] central office.
 [21] Q Okay. Okay. When you received the restraining
 [22] order, what did you do about that?
 [23] A That, once I received the restraining order [24] obviously I
 had to act on the restraining order which [25] indicated to me that
 Mr.Reynoso could continue working.

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[1] However, there would have to be fifty yard difference
 [2] between Ms.O'Donnell and Mr.Reynoso.
 [3] So at that time, I think Mr.Reynoso was on leave [4] and
 Ms.O'Donnell, if I remember correctly, gave her admin [5] leave for
 a period of time.
 [6] Then I decided to ensure staff safety not only for
 [7] Ms.O'Donnell and for Mr.Reynoso, and still make it as
 [8] minimum disruptive to both employees. I changed schedules
 [9] when they returned to work.
 [10] Q And you said Mr.Reynoso was on leave also?
 [11] A He could have been on days off or leave, I'm not
 [12] certain?
 [13] Q You don't recall whether you granted him
 [14] administrative leave?
 [15] A I may have granted both of them administrative
 [16] leave.
 [17] Q How did you change their schedules?
 [18] A Well based upon the restraining order, my concern
 [19] was to make sure both employees, to the best of my ability,
 [20] to make both employees separate working areas to ensure
 that [21] they did not run into each other and that I could abide by
 [22] the restraining order.
 [23] Again, at that time, prior to that, the Union had [24] come to
 me and requested to me that if any employee would [25] get some
 kind of disciplinary action while on Workman's

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[1] Comp, that I would try to maintain their schedules as best I
 [2] could.
 [3] Okay, keeping that in mind, the best I could do, [4] they're
 both bargaining unit employees, or excuse me one is,
 [5] Ms.O'Donnell, Mr.Reynoso is not a bargaining unit
 [6] employee, the best I could do was to change a half hour of
 [7] her schedule.
 [8] And I changed MR. Reynoso's shift from day shift [9] to night
 shift and I stipulated in my letter that they would [10] have to once
 their shift ended, they could, they would have [11] to leave within
 the thirty minutes period of time so they [12] wouldn't run into one
 another.
 [13] Q And did you make these changes right away after
 [14] the incident or was there some lapse in period of time?
 [15] A There may have been three or four or five days. [16] It all
 depends on--
 [17] Q Okay. But just a few days?
 [18] A I would say yes.
 [19] MS. MCDONALD: Okay. Unfortunately, I've got all [20] my
 exhibits out of order.
 [21] (Exhibit No. 8 marked for [22] identification.)
 [23] BY MS. MCDONALD:
 [24] Q But let me show you Exhibit 8. Do you recognize [25] that
 document?

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[1] A Yes, yes, I do.
 [2] Q And what is that document?
 [3] A It's a restraining order issued by Malden District [4] Court.
 [5] Q And was that the order obtained by Ms.O'Donnell [6] for
 protection from David Reynoso?
 [7] A That I don't know. I don't know. My, I don't [8] know if she
 got it or she gave it to me. I don't know.
 [9] Q But this document is concerning Ms.O'Donnell and
 [10] David Reynoso?
 [11] A Correct.
 [12] Q Correct?
 [13] A Correct.
 [14] Q And you already mentioned that they had to stay, I
 [15] believe it was fifty yards from each other or Mr.Reynoso
 [16] had to stay fifty yards away from Ms.O'Donnell, correct?
 [17] A That is correct.
 [18] Q And were there any other restrictions placed on
 [19] Mr.Reynoso?
 [20] A There was a restriction that he couldn't carry a
 [21] firearm.
 [22] Q And what is the date on that document? I believe [23] it's
 on the second page.
 [24] A Date of order was April 9, 2002.
 [25] Q And was there a date that the order expires?

BSA

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[1] A Expiration date of order was April 23, 2002. If [2] I'm reading it correctly.
 [3] Q Does it state on there that the order was extended [4] at any point?
 [5] A Next hearing date was April 23, 2002. Date of, [6] yeah, there was an expiration date. They extended it, April [7] 23, 2003. With a hearing date of April 23, 2003. If I'm [8] reading this correctly, okay.
 [9] Q And without looking at that document, do you [10] recall whether the order was extended beyond April 23, 2003?
 [11] A I extended their separation until, I can't [12] remember if the date was April 23, April 27, I extended it [13] until the probation period ended for Mr.Reynoso.
 [14] Q The probation period set by the Court?
 [15] A Right.
 [16] Q Okay.
 [17] A Because I think that restraining order was still [18] in effect. In fact, there were many restraining orders that [19] I received. But I can't recall every one of them.
 [20] Q I understand. You can't recall the dates, but [21] you--
 [22] A That's pretty much
 [23] Q You recollect the order was extended a couple of
 [24] times?
 [25] A Correct.

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[1] Q And do you recall whether the order was extended [2] into 2004?
 [3] A I, I don't know.
 [4] Q Okay. Let's go back to the investigation.
 [5] A Okay.
 [6] MS. MCDONALD: Let me show you Exhibit 6. And I
 [7] would ask you to take a look at that.
 [8] (Exhibit No. 6 marked for [9] identification.)
 [10] (Pause)
 [11] BY MS. MCDONALD:
 [12] Q Do you recognize that document?
 [13] A No this is an Office of Internal Affairs' [14] document.
 [15] Q Have you ever seen that document?
 [16] A Not that I recall.
 [17] (Exhibit No. 7 marked for [18] identification.)
 [19] MS. MCDONALD: Okay. Let me show you Exhibit 7.
 [20] (Pause)
 [21] THE WITNESS: Yes.
 [22] BY MS. MCDONALD:
 [23] Q Have you ever, first of all, what is that [24] document?
 [25] A It's an OIA, Office of Internal Affairs

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[1] Investigative Report Executive Staff Summary that outlines
 [2] the case and provides information regarding the case.
 [3] Q And is this the document that you received?
 [4] A Yes I did.
 [5] Q And did you review this document in determining [6] what discipline may be appropriate for Officer Reynoso?
 [7] A Yes.
 [8] Q And were the allegations of off duty misconduct
 [9] sustained?
 [10] A Yes they were.
 [11] Q I have a question. What is, for the record, what [12] is the date on this report?
 [13] A The dated report is March 26, 2003. That doesn't
 [14] necessarily mean that I received it on that date but that is
 [15] the date of this report.
 [16] Q So essentially the investigation was completed in
 [17] March of 2003?
 [18] A Correct.
 [19] MS. MCDONALD: I am going to show you Exhibit 9
 [20] and ask you to look at that.
 [21] (Exhibit No. 9 marked for [22] identification.)
 [23] MS. MCDONALD: I'm all out of order.
 [24] THE WITNESS: Okay.
 [25] BY MS. MCDONALD:

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[1] Q Do you recognize that document?
 [2] A Yes I do.
 [3] Q And what is it?
 [4] A It's a letter of proposal to Officer Reynoso for a
 [5] suspension of thirty days for off duty misconduct.
 [6] Q And who drafted that this document?
 [7] A It would be either done by the Captain or the [8] Human Resource Department.
 [9] Q The document is signed by Michael Bollinger,
 [10] correct?
 [11] A Correct.
 [12] Q And it's also signed as being received by Officer
 [13] Reynoso?
 [14] A Correct.
 [15] Q And what is the date on the document?
 [16] A That Mr.Reynoso signed or--?
 [17] Q The date it was drafted?
 [18] A June 4th.
 [19] MR. WILMOT: Objection.
 [20] BY MS. MCDONALD:
 [21] Q And now did you meet with Officer Reynoso prior to
 [22] issuing him discipline?
 [23] A I'm sure I met him on several occasions.
 [24] Q In regard to this incident?
 [25] A Correct.

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[1] Q Do you recall the substance of your conversations [2] with Mr.Reynoso during those meetings?

[3] A The conversations were I met with Ms.O'Donnell on [4] a couple of occasions, probably just as much as I did with [5] Mr.Reynoso, advising both of them that there was a fifty [6] yard restraining order and that they would have to maintain [7] that. If there's any violations, I need to be aware of it.

[8] Prior to any other meetings, Ms.O'Donnell came to [9] my office on several occasions where the conversations were [10] about I don't remember.

[11] There's no one time I remember Mr.Reynoso coming [12] to my office. That was to tell him about the separation [13] issue.

[14] Q Okay. You don't remember calling him to your [15] office of having a meeting with him with regard to his [16] discipline?

[17] A Prior to his discipline?

[18] Q Or at the set time it was handed out or--

[19] A Not that I recall.

[20] MS. MCDONALD: Okay. I am going to show you [21] Exhibit 10. If you could review that.

[22] (Exhibit No. 10 marked for [23] identification.)

[24] THE WITNESS: Okay.

[25] BY MS. MCDONALD:

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[1] Q Do you recognize that document?

[2] A Yes I do.

[3] Q And what is that document?

[4] A I don't know if this is a response from him [5] regarding the proposal matter or--

[6] Q Well, what is the title of the document, I guess [7] on the first page?

[8] A Meeting with Mr.Reynoso.

[9] Q And who is it from?

[10] A It's from me.

[11] Q And is this just something that you typed up for [12] the file or, do you recall?

[13] MR. WILMOT: Objection. You can answer.

[14] THE WITNESS: Mr.Reynoso, no, this could have [15] been during his probation period after I have given the dis [16] - I'm not sure when this memo or our discussions occurred.

[17] Whether it was in between the proposals, in [18] between after I gave him discipline, I'm not quite sure.

[19] BY MS. MCDONALD:

[20] Q Let me call your attention to the first line.

[21] A Okay.

[22] Q On Tuesday, June 17, 2003 at 8:30 a.m., a meeting [23] was held between Warden Winn and David Reynoso regarding his [24] proposed suspension.

[25] Would it be fair to say that based on that

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[1] language, he had not yet received his suspension at the time [2] you had met with him?

[3] A Well, after reading the first sentence, it sounds [4] like this is Mr.Reynoso's written response to the proposal [5] or his discussion with me to his response to the proposal.

[6] Q Okay.

[7] A Because I'm not sure there was a proposal that was [8] also done for termination.

[9] Q You think there may have been a proposal that he [10] be terminated?

[11] A There was a proposal for termination.

[12] Q And is that a written document that you've seen?

[13] A No. Because Central Office advised me that this [14] case would not be a termination case or excuse me, the [15] Regional Office or Central Office, I can't recall, advised [16] me this would not be a termination case.

[17] Q So who proposed that he be terminated?

[18] A That would be the Captain who would propose [19] termination.

[20] Q And that would have been a verbal proposal?

[21] A No, that would have been a proposal written and [22] then sent up for review to the Region and Central Office [23] prior to the employee seeing the proposal of termination.

[24] Q Okay. So the Captain, in this case, Captain [25] Bollinger?

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[1] A Bollinger.

[2] Q Bollinger. Would have prepared a proposal for [3] termination?

[4] A Or the Human Resource Manager and Mr.Bollinger [5] would have signed it, if he agreed. If he agreed with the [6] termination.

[7] Q And that was forwarded to the Central Office?

[8] A Regional Office.

[9] Q Regional Office. And they; do you know if they [10] received this proposal?

[11] A Well, they received the proposal and advisement [12] was given that this would not be a termination case.

[13] Q A verbal advisement or written advisement?

[14] A I don't know whether it was written or verbal.

[15] Q But you recall, do you recall speaking with [16] somebody about this at the Regional Office.

[17] A No, I don't talk to people in the Regional Office [18] about discipline.

[19] Q Okay. Just somehow it came to your attention that [20] this was not a case for termination?

[21] A Correct.

[22] Q You don't recall how, how it came to your [23] attention?

[24] A Well, through my Human Resource Manager.

[25] Q Oh, okay. Do you recall whether at the time--?

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[1] A Do you want this back?
 [2] Q No, you can hang on to it.
 [3] A Okay. I've got a couple of them here. Okay, go [4] ahead.
 [5] Q Whether at the time that you met with Mr.Reynoso [6] and were considering what discipline you should give him, do [7] you recall whether he had any prior discipline?
 [8] A At that time that I met with him while he was [9] giving me his response?
 [10] Q Or anywhere in the time that you had received the [11] investigative report and you were trying to make a [12] determination as to what discipline was warranted in that [13] time period?
 [14] A If I remember correctly, he had a DUI.
 [15] Q And was that a recent occurrence close in time to [16] --?
 [17] A To, I'm not certain.
 [18] Q Okay. And I believed you testified earlier that [19] would be a Category Three --?
 [20] A Correct.
 [21] Q Offense?
 [22] A Correct. A DUI.
 [23] Q A DUI would be. And I believe you testified that [24] an assault between staff members, initially, this particular [25] assault was classified as a Category One or a Category Two?

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[1] A Actually, I don't know what Central Office [2] categorized it. I set it up and they categorized it.
 [3] Did they categorize it as a one or two? I never [4] got a call back. I'm waiting on what they're categorizing [5] and who's going to do the investigation.
 [6] Q Okay. So, was it ever downgraded to a Category [7] Three or the category never came up again?
 [8] A Actually, the category never came up again but [9] they did authorize a local investigation.
 [10] Q Okay. But they could do that even for a Category [11] One or a Category Two? They could authorize a local--?
 [12] A They could.
 [13] Q Okay.
 [14] A They could.
 [15] Q Let me refer you in Exhibit 10 to the second to [16] the last paragraph. Do you see where it says Warden Winn [17] told Mr.Reynoso he may have to make some decisions that [18] could affect him, such as changing his work hours?
 [19] A Mm-hmm.
 [20] Q What is the date on this document?
 [21] A June 17, 2003.
 [22] Q Hadn't you already changed Mr.Reynoso's work [23] hours by this point in time?
 [24] A I changed work hours for both employees on [25] numerous occasions through this whole process.

[1] Q Okay. So there wasn't just one, we're just [2] talking about Mr.Reynoso.
 [3] A Okay.
 [4] Q I believe you testified that you had changed his [5] work hours within five days of the incident or so?
 [6] A Correct.
 [7] Q And that was back in April, maybe the beginning of [8] May of 2003, correct? Sorry, 2002?
 [9] A Yeah, correct.
 [10] Q And now this document is saying, dated June 17, [11] 2003, states that you may have to change his work hours?
 [12] A That is correct. Based upon. I don't know the [13] exact date I gave him his discipline of twenty-one days. [14] The meeting if I recall correctly, was regarding that [15] because he was still on probation, that I would have to [16] continue to change his hours.
 [17] And I think that's part of this memo why I [18] discussed it with him. That, even though you've had your [19] disciplinary process, even though it's over, it's not over. [20] That I'm going to continue with the restraining order of the [21] fifty feet, the fifty yards, excuse me, until the [22] probationary period ended.
 [23] Because I think in his mind, it ended after the [24] Court hearing or whatever. I'm not certain. But I want to [25] make it clear to him that I would still keep him separated

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[1] from Ms.O'Donnell.
 [2] MS. MCDONALD: Okay. I am going to show you [3] Exhibit 11.
 [4] (Exhibit No. 11 marked for [5] identification.)
 [6] THE WITNESS: Okay.
 [7] BY MS. MCDONALD:
 [8] Q Do you recognize that document?
 [9] A Yes I do.
 [10] Q And what does that, what is that document?
 [11] A This is a proposal for suspension for thirty days [12] for off duty misconduct.
 [13] Q Is this a proposal or is this his actual--?
 [14] A Oh, I'm sorry.
 [15] Q Discipline?
 [16] A This is his actual discipline.
 [17] Q But you just stated initially that it was proposed [18] that he be suspended for thirty days, correct?
 [19] A Correct.
 [20] Q And you decided that he, that he would be [21] suspended for twenty-one days?
 [22] A That is correct.
 [23] Q Now it says in the third paragraph. You discussed [24] what you considered in determining what discipline would be [25] appropriate.

[1] Do you see that?
 [2] A Yes.
 [3] Q And in the last sentence, you refer to a prior [4] discipline?
 [5] A Correct.
 [6] Q And that he had been disciplined twice in five [7] years?
 [8] A Well, it says this is your second, which would [9] include this one, I would think.
 [10] Q Okay. Do you know if at the time Mr.Reynoso [11] served his suspension, he was paid?
 [12] A No.
 [13] Q You don't know or he wasn't paid?
 [14] A Do I-?
 [15] Q At the time that he served the suspension. During
 [16] the time he was actually out of work, was he paid?
 [17] A Was he paid? No.
 [18] Q He wasn't?
 [19] A At the time of his suspension, no, he wasn't paid.
 [20] Q Is a DUI classified as off duty misconduct?
 [21] A Yes.
 [22] MS. MCDONALD: I am going to show you this
 [23] document.
 [24] (Exhibit No. 12 marked for [25] identification.)

[1] A Yes.
 [2] Q Okay, but you don't recall issuing that discipline [3] to Mr.Reynoso?
 [4] A Well, at the time, I had thirty-five cases. They [5] were all computer related. Do I remember? No, I don't.
 [6] MS. MCDONALD: Okay. Let me show you another one.
 [7] (Exhibit No. 13 marked for [8] identification.)
 [9] BY MS. MCDONALD:
 [10] Q And can you just state for the record what that
 [11] document is?
 [12] A Again, a Personnel Action.
 [13] Q For? For who?
 [14] A David Reynoso.
 [15] Q And what is this one requesting or regarding?
 [16] A Off duty misconduct.
 [17] Q And what is the date of this document?
 [18] A Effective date March 3, 2003.
 [19] Q And that was another suspension?
 [20] A It says suspension no later than March 3, 2003, so [21] I would have to agree that it's another suspension.
 [22] Q But you don't recall what the off duty misconduct
 [23] was?
 [24] A Well--
 [25] Q Let me ask you another question.

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[1] (Pause)
 [2] THE WITNESS: Okay.
 [3] BY MS. MCDONALD:
 [4] Q Do you recognize that document?
 [5] A Yeah, it's a personnel action.
 [6] Q And what is that for? That document? What's the
 [7] purpose of that document?
 [8] A It's a, well, it's a notice of action that I [9] signed but it's, gives an effective date of suspension.
 [10] The document seems incomplete to me.
 [11] Q Is this something that goes to payroll? For [12] payroll purposes?
 [13] A It goes to payroll and they're supposed to follow [14] the Personnel Action.
 [15] Q Who is this form about?
 [16] A It's David Reynoso.
 [17] Q And let me refer you to the second page of that
 [18] document. At the very end, under Part F Remarks.
 [19] A Okay. Inappropriate use of a government computer,
 [20] is that correct?
 [21] Q Yeah. Do you remember anything about that
 [22] incident?
 [23] A No, I don't.
 [24] Q This document states that he was suspended for
 [25] inappropriate use of a government computer?

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[1] A Well--
 [2] Q Is it possible that this suspension was the [3] suspension he received with regard to the incident with [4] Ms.O'Donnell, based on that date?
 [5] Only if you know, if you don't know--?
 [6] A I don't know but -
 [7] Q Okay.
 [8] A Because there's some things marked out that, I'm [9] not sure what the suspension was for.
 [10] MS. MCDONALD: Okay. I'm going to show you
 [11] another one. I don't know if it will help or not.
 [12] (Exhibit No. 14 marked for [13] identification.)
 [14] BY MS. MCDONALD:
 [15] Q Exhibit 14. Is that another Personnel Action form [16] for David Reynoso?
 [17] A That's correct.
 [18] Q And is that also regarding a suspension for off [19] duty misconduct?
 [20] A Yes it is.
 [21] Q And what is the date on that document?
 [22] A Effective date is July 27, 2003.
 [23] Q And as far as you remember, Mr.Reynoso received a
 [24] suspension for his DUI?
 [25] A Correct.

BSA

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[1] Q And he also received a suspension for the incident
 [2] with Ms. O'Donnell?
 [3] A Correct.
 [4] Q And a third suspension for unauthorized use of a
 [5] government computer?
 [6] A That's correct, which I didn't realize until [7] today.
 [8] Q Okay. But we're unsure of what Personnel Action [9] form
 goes with which off duty misconduct, correct?
 [10] A Well, I am. Because at the time, as the [11] discipline
 would be given out, that a Personnel Action would [12] come up to
 me.
 [13] Q Okay. Do you consider an assault and battery with [14] a
 dangerous weapon on a staff member similar in seriousness
 [15] to a DUI?
 [16] A I would say it's more serious than a DUI.
 [17] Q And in considering discipline for a DUI, actually,
 [18] strike that.
 [19] Do you recall the length of the suspension that [20] Officer
 Reynoso received for his DUI?
 [21] A One day if I remember correctly.
 [22] Q Okay.
 [23] MS. MCDONALD: Do you want to break for lunch?
 [24] MR. WILMOT: What time is it?
 [25] MS. MCDONALD: It's 12:00.

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[1] MR. WILMOT: 12:00, sure. A half hour or is that [2] enough
 time?
 [3] MS. MCDONALD: How about forty-five minutes?
 [4] MR. WILMOT: Okay.
 [5] MS. O'DONNELL: I have a doctor's appointment at
 [6] quarter to one.
 [7] MS. MCDONALD: That's fine.
 [8] MS. O'DONNELL: I could come right back. It's [9] right
 down the street.
 [10] MS. MCDONALD: That's fine. We can go off the
 [11] record.
 [12] (Off the record at 12:00 p.m.)

[1] AFTERNOON SESSION
 [2] (12:45 p.m.)
 [3] MS. MCDONALD: Okay, are we ready?
 [4] THE WITNESS: Mm-hmm.
 [5] BY MS. MCDONALD:
 [6] Q What are Officer Reynoso's job duties as an SIS
 [7] officer?
 [8] A Watching the compound through cameras. Could be
 [9] listening to inmate phone calls or could be gathering, well
 [10] gathering intelligence about inmates. That's pretty much
 [11] it.
 [12] Maybe taking urines from inmates.
 [13] Q Does he check their mail or--?
 [14] A He could, I don't know.
 [15] Q Okay. And how many other officers are there in [16] the
 SIS Department, approximately?
 [17] A Approximately three.
 [18] Q And between April 8, 2002 and the present, having
 [19] there always been approximately three officers in that
 [20] department?
 [21] A Approximately. Give or take one or two based upon
 [22] military leave. Yeah.
 [23] Q There hasn't been a drastic cutback or anything in
 [24] reduction of hours or reduction in force in that department?
 [25] A No.

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[1] Q Okay. And the other officers in that department, [2] do
 they have similar job functions as Officer Reynoso?
 [3] A Yes.
 [4] Q They all kind of do the same things?
 [5] A Yes.
 [6] Q Except for Darren Brown who does investigations?
 [7] A Correct.
 [8] Q Okay.
 [9] MR. WILMOT: Just to clarify, you're talking about [10] when
 Reynoso was in that department or--?
 [11] BY MS. MCDONALD:
 [12] Q Yes, I understand that he is no longer in the SIS
 [13] Department, is that, is that correct?
 [14] A No he is not.
 [15] Q Okay. So I am talking about the period of time [16] from
 April 8, 2002 until he was transferred out of that [17] department.
 [18] And why was he, why was he transferred out of that
 [19] department?
 [20] A I don't know.
 [21] Q Okay. Do you know whether Officer Reynoso started
 [22] in the SIS Department or whether he was something else
 [23] before he was an SIS officer?
 [24] A I don't know. I don't know.
 [25] Q Are SIS officers capable of performing the job

[1] duties in the other departments of the institution?
 [2] A All staff are.
 [3] Q All staff are able to rotate throughout -
 [4] A All staff are capable of doing different, during, [5] all staff are capable of performing other duties. For [6] example, an emergency.
 [7] Q So, based on needs of service, type thing?
 [8] A Right.
 [9] Q Did Colleen ever express her fears in regard to [10] Officer Reynoso to you?
 [11] A Yes.
 [12] Q Either verbally or in writing?
 [13] A Yes.
 [14] Q Did she express them verbally?
 [15] A In writing. I don't recall verbally. But I know [16] it was in writing.
 [17] MS. MCDONALD: Okay. I am going to show you a
 [18] document that is marked Exhibit 15.
 [19] (Exhibit No. 15 marked for [20] identification.)
 [21] (Pause)
 [22] BY MS. MCDONALD:
 [23] Q Do you recognize that document?
 [24] A Yes I do.
 [25] Q You can hang on to it. And what is that document?

[1] A Yes.
 [2] Q Did you take any action in response to this memo?
 [3] A No I did not.
 [4] Q Did you ever receive notice that Officer Reynoso
 [5] violated the terms of his violation by firing a weapon at
 [6] work?
 [7] A Yes I did.
 [8] Q And can you tell me about that? How you received [9] that notice or what you recall about that incident?
 [10] A I can't recall who told me. What I do remember is [11] the person that told me had mentioned that Mr.Reynoso was [12] at firearms training, firing a weapon and that Ms.O'Donnell [13] had called probation to report it.
 [14] And I asked that person, which I cannot remember [15] who the person is, was that true and the person did say yes [16] he did and so I said okay. And I called the Probation [17] Department and reported the violation?
 [18] Q You did?
 [19] A Yes I did. In case it wasn't reported.
 [20] Q So you had no knowledge of him being at firearms
 [21] training?
 [22] A Not until I was notified that he had already been [23] out there and shot.
 [24] Q And who would have assigned him there?
 [25] A It would be the Employee Development Manager.

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[1] A It's a memorandum to me from Colleen O'Donnell
 [2] indicating her issue of feeling unsafe. I would summarize [3] it like that.
 [4] Q And what is the date of the document?
 [5] A May 13, 2002.
 [6] Q And did you take any action in response to this
 [7] document?
 [8] A No, I did not.
 [9] (Exhibit No. 16 marked for [10] identification.)
 [11] MS. MCDONALD: Let me show you this document.
 [12] THE WITNESS: Okay.
 [13] BY MS. MCDONALD:
 [14] Q Do you recognize that document?
 [15] A Yes I do.
 [16] Q And what is that document?
 [17] A It's a memo for Steve Gagnon, Inmate Systems
 [18] Officer, from Colleen O'Donnell regarding safety issues.
 [19] Q And you have seen this document before?
 [20] A Yes I have.
 [21] Q And what's the date on it?
 [22] A June 10, 2002.
 [23] Q And is it, is it fair to say that this is an [24] additional memo from Ms.O'Donnell regarding her concern, [25] her fears or concerns with regard to David Reynoso?

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[1] Q And who was that?
 [2] A At the time?
 [3] Q Yes.
 [4] A It would have been Karen Parrott?
 [5] Q Karen Parrott?
 [6] A Mm-hmm.
 [7] Q Did you conduct any kind of investigation in, [8] regarding how he got assigned there?
 [9] A No.
 [10] Q Did you do anything in regard to this incident [11] other than phone the Probation Department?
 [12] A No.
 [13] Q Do you recall who you spoke to at the Probation
 [14] Department?
 [15] A I asked for Mr.Reynoso's probation officer. It [16] was a female. I can't recall the name.
 [17] Q Okay. Did you ever give a statement to any court
 [18] official or district attorney or any other person in regard [19] to Officer Reynoso assigned to train and shoot on the firing
 [20] range?
 [21] A Not that I can recall. I remember calling the
 [22] Probation Officer.
 [23] Q You didn't testify for him at the court [24] appearance, did you?
 [25] A No.

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[1] Q If I suggested to you that the testimony at the [2] hearing was that you ordered Officer Reynoso to shoot at the [3] firing range, would that be accurate?

[4] A No.

[5] (Exhibit No. 17 marked for [6] identification.)

[7] MS. MCDONALD: Let me show you--

[8] THE WITNESS: Okay.

[9] BY MS. MCDONALD:

[10] Q Does that, do you recognize that document?

[11] A Yes.

[12] Q And what is that document?

[13] A It's a memorandum from me through Darren Brown [14] from David Reynoso indicating that he did fire a firearm and [15] that he had a hearing, a probation violation hearing for [16] November 20, 2003.

[17] Q And what is the date of this memo?

[18] A November 13, 2003.

[19] Q And does this memo refresh your recollection at [20] all as to who informed you of the probation violation?

[21] A Honestly, no.

[22] Q Okay. Is inmate transport a part of Officer [23] Reynoso's job duties in SIS?

[24] A If he signs up for overtime, or an emergency [25] situation happens or if he signs up for overtime.

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[1] Q And does the transportation of inmates require the [2] use of a firearm?

[3] A One officer has a firearm on him, that's correct.

[4] Q And is there more than one officer on the [5] transport?

[6] A Yes. Could be two, could be three.

[7] Q Could it ever be one?

[8] A It could be one with a camp inmate. It could be.

[9] Q Okay. But only one officer would have a firearm?

[10] A Correct.

[11] Q And do you have any knowledge of Officer Reynoso [12] transporting any inmates at the time he was on probation?

[13] A No.

[14] Q And subject to the restraining order?

[15] A No. Except for the memo that was brought to my [16] attention. I think it was -

[17] (Pause)

[18] Umm, ahh.

[19] Q You believed someone mentioned it in a memo?

[20] A Could have, yeah.

[21] Q But you don't recall who?

[22] A No.

[23] Q Okay. When, strike that. After you, after April [24] 8, 2002, when you changed Ms.O'Donnell's work hours and [25] assignment, did she complain to you about that change?

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[1] MR. WILMOT: Objection. You can answer.

[2] THE WITNESS: Not that I recall. No.

[3] BY MS. MCDONALD:

[4] Q You don't recall her ever asking to be put back on [5] her regular hours?

[6] A Not that I recall.

[7] Q Do you recall her at any point asking to be [8] allowed to rotate back in her department?

[9] A Not that I recall.

[10] Q Do you recall the, strike that. If I suggested to [11] you that Officer Reynoso pled to sufficient facts for [12] finding of guilty and received a continue without a finding [13] in January 2003, would that be accurate?

[14] Do you recall that?

[15] A Yes.

[16] Q And do you recall Ms.O'Donnell approaching you [17] and expressing concerns or fears because Officer Reynoso, in [18] her words, was convicted?

[19] A I don't recall that at all.

[20] Q Do you recall having any conversation with her [21] very soon after that court date?

[22] Within a few days of that court date?

[23] A Not that I recall.

[24] Q Okay. At some point, did you receive notice that [25] Ms.O'Donnell needed a medical leave of absence?

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[1] A Repeat that question again. I'm sorry.

[2] Q At some point in 2003, did you receive notice or [3] did you hear that Ms.O'Donnell needed a leave, a medical [4] leave of absence?

[5] A Well throughout the period, probably at that time, [6] I received many medical documentation regarding her medical [7] health.

[8] Around that time, I'm sure I did. I would have to [9] look at a document.

[10] Q Okay. When Ms.O'Donnell informed you of the [11] assault on April 8, 2002, was she upset?

[12] MR. WILMOT: Objection. You can answer.

[13] THE WITNESS: She was upset and had tears in her [14] eyes.

[15] MS. MCDONALD: Let me show you -

[16] (Exhibit No. 18 marked for [17] identification.)

[18] (Pause)

[19] THE WITNESS: I don't remember seeing this [20] document.

[21] BY MS. MCDONALD:

[22] Q Okay. Do you know what it is?

[23] A It's a medical, it's a medical report from her [24] doctor, I guess. From doctor, I can't read the position [25] signature, but from a doctor.

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[1] Q Now that document appears to actually be a portion [2] of perhaps a larger document. And there are some numbers in [3] the upper right hand corner.
 [4] Do you have any idea what document this may be a [5] part of?
 [6] A No.
 [7] Q Could it have been a request for some sort of [8] leave?
 [9] A I don't know. Because I've never, I don't recall [10] seeing this particular document.
 [11] (Exhibit No. 19 marked for [12] identification.)
 [13] MS. MCDONALD: Okay. Let me show you this one.
 [14] THE WITNESS: Yeah, I - I know this document.
 [15] BY MS. MCDONALD:
 [16] Q Okay. You received that document?
 [17] A Yes.
 [18] Q And what is that document?
 [19] A It's a medical report of Colleen O'Donnell dated
 [20] January 31, 2003.
 [21] Q And is that from her doctor.
 [22] A It's from a doctor, yes.
 [23] Q Doctor George Milowe?
 [24] A Right.
 [25] Q And does this document indicate that Ms.O'Donnell

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[1] suffers from post traumatic stress disorder?
 [2] A Yes it does.
 [3] Q And does it related to what her symptoms are?
 [4] A Yes.
 [5] MR. WILMOT: Can we go off the record for a [6] moment?
 [7] MS. MCDONALD: Sure.
 [8] (Off the record at 1:11 p.m.)
 [9] (On the record at 1:13 p.m.)
 [10] BY MS. MCDONALD:
 [11] Q Okay. I believe the question was does this note
 [12] indicate to you what Ms.O'Donnell's symptoms, her post
 [13] traumatic stress disorder were?
 [14] A Yes.
 [15] Q And does the doctor indicate in this note, any [16] action that may be taken to alleviate Ms.O'Donnell's [17] symptoms?
 [18] A Yes.
 [19] Q And what does he recommend?
 [20] A Well, he recommends that Ms.O'Donnell not be
 [21] required to work in the same facility as Mr.Reynoso.
 [22] Q Did you take any action in response to this [23] letter?
 [24] A There were several doctor notes given to me around
 [25] this period of time, if I remember correctly. I think this

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[1] was the doctor note that I had a staff psychiatrist - I [2] wanted additional information.
 [3] I'm not a doctor. I'm not a psychiatrist. What [4] the treatment in my - again, I'm not a psychiatrist, the [5] treatment plan was basically to remove Reynoso or they [6] couldn't work in the same environment. That's the treatment [7] plan.
 [8] That didn't sound like a very good treatment plan [9] to me, even though I'm not a doctor or psychiatrist. I had [10] a psychiatrist read one of these doctor's note. I think it [11] was this doctor's note, to explain to me if that is a good [12] treatment plan or not. Or what his thoughts were.
 [13] So if this is the doctor's note, I gave it to a [14] staff psychiatrist and the psychiatrist provided me that he [15] needed more information from the doctor which I requested to [16] get permission from Ms.O'Donnell to get that.
 [17] Q Okay, and -
 [18] A Before I made a decision.
 [19] Q A decision on?
 [20] A Any decision what to do with Ms.O'Donnell or
 [21] Mr.Reynoso, keeping them separated.
 [22] Q Okay. Was Ms.O'Donnell requesting some form of
 [23] leave at this time, in this time period?
 [24] A If she was running out of leave without pay, yes.
 [25] Q Do you recall whether you granted her

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[1] administrative leave?
 [2] A I don't recall if I granted her administrative [3] leave at this particular time. I did grant her [4] administrative leave throughout the situation.
 [5] I could, I don't recall. I don't remember. At [6] the same time, I was getting two or three doctor's notes. [7] And I'm - one doctor's note, I granted an extension of [8] administrative leave or leave without pay to get more [9] information back.
 [10] Q Okay.
 [11] A From her doctor.
 [12] Q Now, also around this time, did you at some point,
 [13] become aware that Ms.O'Donnell had hired an attorney?
 [14] A I got a letter, I think, from Mr.Rizzitelli, if I [15] remember correctly, around the same time. Roughly around [16] the same time.
 [17] Q Okay. So you, who did you make a request of that
 [18] they obtain further medical information from Ms.O'Donnell
 [19] or her doctor?
 [20] A If I remember correctly, her supervisor, [21] Mr.Gagnon, made a phone call to Ms.O'Donnell. I can't [22] remember if it was a written request from myself for [23] additional information but I know a phone call was made to [24] get permission to get additional information.
 [25] Q And do you know whether an authorization or

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[1] release for medical information was sent to Ms.O'Donnell
 [2] with a request that she sign it?
 [3] A No I do not.
 [4] Q Okay. Other than the two or three doctor's notes [5] that
 you think you received during this period of time, did [6] you
 receive any further medical information from [7] Ms.O'Donnell or
 her attorney or her doctor?
 [8] A Well, I kept receiving a letter from [9] Mr.Rizzitelli.
 [10] Q And do you recall the content of those letters?
 [11] A I think, the first letter was I'm representing
 [12] Ms.O'Donnell. Any issues or concerns, go through me, which
 [13] I never responded to.
 [14] Q Did you disregard his letter of representation?
 [15] A No.
 [16] Q Okay. You just -
 [17] A Colleen O'Donnell never came me permission to talk
 [18] to Mr.Rizzitelli. So I guess I did disregard his letters [19] until I
 got permission.
 [20] Q And is it required that you obtain permission to
 [21] speak to an employee's attorney?
 [22] A Yes.
 [23] Q Is that a Bureau of Prison's policy?
 [24] A It's a privacy policy, as far as I'm concerned.
 [25] Q Okay.

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[1] A It wouldn't be right to give information about a [2] staff
 member to anybody whether it's a public person or [3] attorney
 until I get written permission.
 [4] Q Okay. Did Ms.O'Donnell and/or her attorney, [5] request a
 reasonable accommodation for her post traumatic [6] stress
 disorder?
 [7] MR. WILMOT: Objection. You can answer.
 [8] THE WITNESS: Her attorney may have, [9] Mr.Rizzitelli?
 [10] MS. MCDONALD: Yes.
 [11] THE WITNESS: I can't, the best I can recall, is I [12] think in
 one of Mr.Rizzitelli's letter requested [13] accommodation. Now
 whether I had permission at that point, [14] to talk to him, I can't
 recall.
 [15] MS. MCDONALD: Okay.
 [16] THE WITNESS: If she gave me permission, then I [17] did
 address the letter to him.
 [18] MS. MCDONALD: Okay. I am going to show you this
 [19] document.
 [20] (Exhibit No. 20 marked for [21] identification.)
 [22] THE WITNESS: Yes, I recall this.
 [23] BY MS. MCDONALD:
 [24] Q Is it fair to say that you are responding to a [25] request
 of Ms.O'Donnell for an accommodation?

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[1] A Yes.
 [2] Q And what is the date of this letter?
 [3] A January 27, 2003.
 [4] Q Do you have a memory, does this refresh your [5] memory
 as to whether Ms.O'Donnell asked you for an [6] accommodation
 prior to January 27, 2003?
 [7] A She must have or I wouldn't have written this [8] letter.
 [9] Q Okay.
 [10] A Whether it was written. Verbal or written.
 [11] Q Okay. You state in the second paragraph that you
 [12] provided an accommodation for her situation since April of
 [13] 2002.
 [14] Do you see that?
 [15] A Yes.
 [16] Q And what situation were you referring to?
 [17] A Her incident and alleged assault down at Mirror
 [18] Lake.
 [19] Q And at the end of that second paragraph, you state
 [20] that you can further restrict his, meaning Officer Reynoso's
 [21] work area to the camp if she believes it's a viable
 [22] accommodation.
 [23] Do you see that?
 [24] A Yes I do.
 [25] Q And in the next paragraph, you ask her to advise

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[1] you in writing is that accommodation is acceptable.
 [2] Do you see that?
 [3] A Yes.
 [4] Q Did anyone ever respond to this letter in regard [5] to the
 accommodation that you offered Ms.O'Donnell?
 [6] A Can you repeat the question, I'm sorry, I was [7] reading
 the letter again.
 [8] Q Do you recall whether anyone responded to your [9] offer
 of an accommodation?
 [10] A I don't think I got a response for this letter.
 [11] Q One way or another?
 [12] A I can't recall.
 [13] MS. MCDONALD: Okay. Thanks. They're all [14] different.
 This is much better.
 [15] (Exhibit No. 21 marked for [16] identification.)
 [17] (Pause)
 [18] THE WITNESS: Okay.
 [19] BY MS. MCDONALD:
 [20] Q Do you recall receiving this letter?
 [21] A Yes.
 [22] Q Did you have prior dealings with Attorney [23] Rizzitelli
 prior to his representation of Ms.O'Donnell?
 [24] A Yes.
 [25] Q And did, if you know, did Cindy Lord have prior

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- [1] dealings with Attorney Rizzitelli?
 [2] A Yes.
 [3] Q Were those dealings difficult?
 [4] MR. WILMOT: Objection. You can answer.
 [5] A With me?
 [6] Q Yes. Between you and Attorney Rizzitelli?
 [7] A I didn't think so.
 [8] Q Did Attorney Rizzitelli use to work here?
 [9] A No.
 [10] Q At Devens?
 [11] A No.
 [12] Q Did he work for the Bureau of Prisons?
 [13] A Yes.
 [14] Q Let me call your attention to the second [15] paragraph?
 [16] A Okay.
 [17] Q Where he seems to be, he's stating that he has not
 [18] been advised that Cindy's, I'm assuming Ms. Lord's, January
 [19] 9, 2003 request for a full medical release be retracted.
 [20] Does that statement refresh your memory as to [21] whether a
 full medical release was sent to Ms. O'Donnell?
 [22] A No I don't.
 [23] Q Okay. Is it safe to say you usually handle those
 [24] matters?
 [25] A That I handle which matters?

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- [1] Q That you don't handle those matters. Obtaining
 [2] medical releases?
 [3] A No, usually H, the department, HR.
 [4] Q Okay. And let me call your attention to the third
 [5] paragraph. The second sentence states that you advised
 [6] Colleen that you would be willing to restrict Officer [7] Reynoso
 to the camp. This may be in response to an [8] accommodation.
 We thank you. Please elaborate on this [9] proposal.
 [10] Is that a response to your offer of a reasonable
 [11] accommodation?
 [12] MR. WILMOT: Objection. You can answer.
 [13] THE WITNESS: Obviously that's my response that I
 [14] placed him in the camp to bring her back to work.
 [15] BY MS. MCDONALD:
 [16] Q But is this letter responsive to your letter of [17] January
 27, 2003 wherein you offered to place Officer [18] Reynoso at the
 camp?
 [19] MR. WILMOT: Objection. You can answer.
 [20] THE WITNESS: Is this my response.
 [21] MS. MCDONALD: Is this responsive, is this letter [22] dated
 February 10, 2003 from Ms. O'Donnell's attorney [23] requesting
 more information about the camp?
 [24] THE WITNESS: Okay.
 [25] MR. WILMOT: Objection. You can answer.

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- [1] MS. MCDONALD: Responsive to your offer of a
 [2] reasonable accommodation?
 [3] MR. WILMOT: Objection to the question. You can
 [4] answer.
 [5] THE WITNESS: I'm confused. I'm sorry.
 [6] MS. MCDONALD: That's okay. That's okay. I'll [7] start over.
 [8] THE WITNESS: Okay.
 [9] BY MS. MCDONALD: In Exhibit, let me see that [10] letter
 there, 20, letter of January 27, 2003. In the second [11] paragraph
 -
 [12] A Right.
 [13] Q You offer an accommodation -
 [14] A Correct.
 [15] Q To restrict Officer Reynoso to the camp.
 [16] A Okay.
 [17] Q Is that correct?
 [18] A Yes.
 [19] Q Okay. And then you ask Ms. O'Donnell in that same
 [20] letter to notify you if the accommodation is acceptable -
 [21] A Correct.
 [22] Q Or not?
 [23] A Correct.
 [24] Q Right?
 [25] A Correct.

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- [1] Q Is this letter of February 10, responsive to the [2] letter of
 January 27?
 [3] MR. WILMOT: Objection. You can answer.
 [4] THE WITNESS: While I'm talking, while I'm writing [5] the
 letter to Ms. O'Donnell, and in between that period of [6] time, I
 received permission to write, or excuse me.
 [7] BY MS. MCDONALD:
 [8] Q Well, let me try to ask you--
 [9] A Well, I think Ms. O'Donnell notified him and I [10] received
 this letter from him and he's asking me the [11] question. I don't
 know what the next memo to either one [12] that I wrote. I can't
 recall. I would have to look at the [13] next memo.
 [14] Q Okay. So you have no, do you know whether you
 [15] responded to this letter of February 10, 2003?
 [16] A I can't remember. I would have to look at the [17] next
 memo that's in order. I don't know.
 [18] (Exhibit No. 22 marked for [19] identification.)
 [20] MS. MCDONALD: I'm going to show you -
 [21] THE WITNESS: Okay. I remember this memo.
 [22] BY MS. MCDONALD:
 [23] Q Okay. And what is that memo?
 [24] A It's from Mr. Rizzitelli again saying by now we [25] should
 have made decisions regarding accommodation. This is

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[1] his second request.
 [2] Q Is it fair to say that letter with the exception [3] of the boldface type over the top of it is identical to the [4] previous letter marked Exhibit 21.
 [5] A Yes.
 [6] Q So the only difference would be the boldface, [7] large font type that says no response received regarding [8] sent February 18, 2003?
 [9] A Yes.
 [10] MS. MCDONALD: Let me show you a document.
 [11] (Exhibit No. 23 marked for [12] identification.)
 [13] THE WITNESS: Okay.
 [14] BY MS. MCDONALD:
 [15] Q Do you recognize that document?
 [16] A The same letter.
 [17] Q And the only, is there anything different about [18] that letter?
 [19] A Well, up on top it says U.S. Certified Mail [20] Received or Certified Mail No Response, Resent March 3rd.
 [21] Q Otherwise the letter is identical to Exhibit 22?
 [22] A Correct.
 [23] Q And Exhibit 21, correct?
 [24] A Correct.
 [25] (Pause)

[1] Q Were you referring to the restraining order as [2] well?
 [3] A Well, I had to take that into consideration when I [4] wrote the letter, yes.
 [5] Q Can you explain the Voluntary Leave Transfer [6] Program to me?
 [7] A There is a committee that meets. It's an [8] independent committee. If you ask me who's on it, I [9] wouldn't be able to tell you.
 [10] But anyway they meet if an employee needs annual
 [11] leave, sick leave. They make a request in writing to me or
 [12] to Human Resource Development Manager. At that time, if I
 [13] get it, I sent it down. I tell the Committee to meet. I [14] don't know how Ms. Lord does it, but I do it that way.
 [15] I tell them to meet, go over the facts and either [16] approve or deny it.
 [17] Q And is this leave program, is this the one where
 [18] other employees donate time?
 [19] A Correct.
 [20] Q And it's put into some kind of bank or--
 [21] A There's a national one you can get into or a local [22] one where an employee makes a request for leave, makes a
 [23] request for staff to loan their leave to them or give their
 [24] leave to them.
 [25] Q Okay. And you are not on this committee, right?

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[1] MS. MCDONALD: Okay, you know what, I'm going to
 [2] have you look at this once first. I gave them to you out of
 [3] order.
 [4] (Exhibit No. 24 marked for [5] identification.)
 [6] (Pause)
 [7] THE WITNESS: Yes. Okay. I know this memo.
 [8] BY MS. MCDONALD:
 [9] Q And what is that memo?
 [10] A That's a letter to Mr. Rizzitelli from me [11] outlining our position on American Disabilities Act and [12] again, trying to accommodate the situation ensuring the work [13] schedules differ from each others and notifying him that the [14] Voluntary Leave Transfer Program Committee met and [15] determined that Ms. O'Donnell was not eligible or [16] disapproved her request.
 [17] The decision is a final decision. It also [18] indicates that she was placed on AWOL status.
 [19] Q In the second paragraph, the first sentence it [20] says I have provided accommodations for Ms. O'Donnell's [21] personal situation since April of 2002. And again, the word [22] situation, to what were you referring when you said the word [23] situation?
 [24] A To the alleged assault at Mirror Lake on April [25] 8th.

[1] A No.
 [2] Q Do you know they denied Ms. O'Donnell voluntary
 [3] leave?
 [4] A No.
 [5] Q I've lost a document. I'll have to use this one. [6] I'm sorry, let's go off the record for one second.
 [7] (Off the record at 1:40)
 [8] (On the record at 1:40)
 [9] (Pause)
 [10] A I already have this document. This document that
 [11] you gave me.
 [12] Q Okay. So that would explain where my copy went.
 [13] Can you unmark this. I thought it looked [14] familiar.
 [15] What is advanced sick leave?
 [16] A A person could request advanced sick leave.
 [17] Q but what does that mean? How does that differ [18] from sick leave or--
 [19] A Well, when a person runs out of sick leave and
 [20] needs sick leave, they can make a request to me requesting.
 [21] I don't know the total amount they can request. Up to
 [22] thirty days, sixty days, one hundred and twenty days, I
 [23] don't know what the statute is on that but they can make a
 [24] request to me for advanced, I can give them advanced sick
 [25] leave.

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[1] Q Is that like borrowing sick leave from the next [2] year or something?

[3] A No, you're not borrowing, you're actually, if I [4] approve that, I can give you thirty days advanced sick leave [5] and then it would be deducted from your sick leave, let's [6] say, you get four hours per pay period, or four hours per [7] pay period, and I advanced you thirty hours sick leave, when [8] you gain that four hours on your pay check, that four hours [9] would be deducted from your thirty hours.

[10] Q Okay.

[11] A And so on and so forth until you pay it back. So, [12] like if you want to call it borrowing, I guess you can call [13] it borrowing.

[14] Q Okay. And so what are the circumstances where you [15] would deny somebody advanced sick leave?

[16] A I would deny, number one, I have told all staff in [17] the institution through recalls from the last five years, [18] that don't abuse your sick leave. I told all staff that in [19] my recalls.

[20] And that you're pretty much at the mercy of the [21] Warden if you would request sick leave.

[22] If there's any kind of abuse, it would probably be [23] denied.

[24] If I got a doctor's note from an individual that [25] said is unable to return to work or there's no, and if I

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[1] requested medical documentation from a staff member and they [2] failed to provide me medical documentation, I wouldn't [3] approve it.

[4] Q Okay. So in Ms.O'Donnell's case, she, at some [5] point, gave you a doctor's note from her doctor saying that [6] she had post traumatic stress disorder and could not work, [7] is that correct?

[8] A That's correct.

[9] Q And is it fair to say she made various requests [10] for leave? Whether it be the Voluntary Leave Transfer [11] Program or Advanced Sick Leave, is that correct?

[12] A That's correct.

[13] Q And do you have a recollection of why [14] Ms.O'Donnell was denied Advanced Sick Leave as you sit here [15] today?

[16] A One doctor's note says unable to return to work, [17] and I requested additional medical documentation from [18] Ms.O'Donnell and she never supplied any more documentation [19] after I requested it.

[20] Q Do you recall her attorney objecting to the medial [21] authorization that was sent to Ms.O'Donnell?

[22] A He may have, but I'm not dealing with an attorney [23] on this case, I'm dealing strictly with Ms.O'Donnell and [24] her request.

[25] Q So if Ms.O'Donnell were to come back to you and

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[1] say hypothetically, I believe this medical release violates [2] my privacy rights and I'm not going to sign it, what would [3] you then say to her?

[4] Would you simply deny her request or--?

[5] A Well, number one, I would call her in or call any [6] person in, not necessarily Ms.O'Donnell, which I've had in [7] the past, and ask them well that's fine if that's what you [8] choose to do or we can talk about it and it's confidential [9] between the two of us.

[10] And if I think it's a reasonable request, whether [11] they abuse their sick leave, whether they have sick leave or [12] they need sick leave, you know, I'm going to approve it.

[13] If it's a reasonable request and if they provide [14] me in as a confidential between that person and myself, it's [15] not going to go anywhere. If they still feel say like, I'm [16] not going to do it, then I'm not going to approve sick [17] leave, advanced sick leave.

[18] I mean I have advanced sick leave, but I have to [19] know what the issues are and I have to have cooperation from [20] the staff person.

[21] Q Now in this case, you received notice from [22] Mr.Rizzitelli that they objected to the medical release, [23] correct?

[24] A Well, I don't recall that. I don't recall that [25] they objected to that.

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[1] Q Okay. You don't remember, but is it possible?

[2] MR. WILMOT: Objection. You can answer.

[3] THE WITNESS: I don't recall that they, I'm sorry, [4] what was your -

[5] BY MS. MCDONALD:

[6] Q Just whether you recalled either Colleen or her [7] attorney objecting to the medical release that was sent to [8] them?

[9] A I do not recall them objecting to the medical [10] release.

[11] Q Okay. Nobody ever told you that they objected to [12] the medical release?

[13] A Not that I recall.

[14] Q Okay. So because you denied Ms.O'Donnell [15] advanced sick leave, was she then placed on AWOL status?

[16] MR. WILMOT: Objection. You can answer.

[17] THE WITNESS: I don't know the given time. The [18] time span. She could have been given extended leave without [19] pay for a short period of time to give me doctor's, an [20] updated doctor's note but sometime during that period, she [21] was placed on AWOL status.

[22] BY MS. MCDONALD:

[23] Q Okay. And the period of time we're talking about [24] is approximately February of 2003?

[25] Do you have a recollection of that?

BSA

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[1] A It was around then. It could have been March. It [2] could have been February when she was placed on AWOL. I [3] know she was placed on AWOL status.

[4] Q Okay.

[5] A I don't know the exact date.

[6] Q You know that Ms.O'Donnell was placed on AWOL [7] status twice?

[8] A Correct, yes.

[9] Q And we're talking about the first incident of [10] AWOL, correct?

[11] Right now?

[12] A Well, honestly, I don't remember the dates.

[13] Q Okay.

[14] A I don't remember the dates. I know she was placed [15] on AWOL status.

[16] MS. MCDONALD: Okay. Let me show you this [17] document.

[18] (Exhibit No. 25 marked for [19] identification.)

[20] (Pause)

[21] THE WITNESS: Okay.

[22] BY MS. MCDONALD:

[23] Q Do you recall that letter?

[24] A Yes.

[25] Q What is the date on that letter?

[1] though?

[2] A Yeah, I did, I guess.

[3] Q At some point, did you receive notice from either [4] Ms.O'Donnell or her attorney that she wanted to return to [5] work?

[6] A I received either correspondence or the supervisor [7] advised me Colleen wanted to come back to work.

[8] Q Okay. And did you take any action in that regard?

[9] A I don't know if I put anything in writing. I did [10] have the supervisor call Colleen and I mentioned that she [11] would have to have a doctor's note saying she could return [12] to work full duty. And that because of, I think it was [13] around the time that he, Mr.Reynoso was still on probation; [14] I still had to keep them separated.

[15] And I think in one of the doctor's notes, I think [16] it was before or after or during, the doctor even said she [17] should be at a different facility and I had the supervisor, [18] I put it in writing, that I can't remember, but we contacted [19] Colleen, Ms.O'Donnell and offered to place her at the camp.

[20] And she agreed to it verbally.

[21] Q I we talking about in June of 2003 right now?

[22] A I'm, I'm--

[23] Q You're not sure?

[24] A I'm not sure of the timeframe. I do know she [25] didn't want to come back to work. I offered her the camp.

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[1] A March 24, 2003.

[2] Q And what is this letter?

[3] A Well he's claiming that I'm not responding, that [4] I'm not corresponding responsively.

[5] Q Who is he?

[6] A Mr.Rizzitelli.

[7] Q Does he again ask you to elaborate on restricting [8] Officer Reynoso to the camp?

[9] A Yes.

[10] MR. WILMOT: Objection to the question.

[11] Q And did you respond to this letter?

[12] A I don't recall.

[13] Q Do you recall ever responding or elaborating on [14] your proposal to restrict Officer Reynoso to the camp?

[15] A No, I never elaborated. Because I gave him my [16] plan of action to put Mr.Reynoso at the camp. I thought it [17] was self-explanatory.

[18] Q Even though you received about five letters asking [19] for elaboration?

[20] MR. WILMOT: Objection. You can answer.

[21] THE WITNESS: Five, I think three of the five [22] letters or four of the five letters I never had permission [23] to talk to him.

[24] BY MS. MCDONALD:

[25] Q Okay. You had permission to talk to Colleen

[1] Verbally she agreed to the camp and then she rescinded.

[2] She did not want to go to the camp.

[3] Q Okay.

[4] A I don't know if it was in June. I don't know if [5] it was in July. The timeframe, I--

[6] Q Okay. Let me just say that for the following [7] questions okay?

[8] You already stated that Ms.O'Donnell was twice [9] AWOL, correct?

[10] A Yes.

[11] Q You testified to that already. And if I suggest [12] to you that her first AWOL was from February 3, 2003 through [13] June 10, 2003, would that comport with your recollection of [14] the event?

[15] Does that time line ring any bells for you?

[16] A Right around that given time, yes, based upon that [17] I was not receiving any medical updates.

[18] Q Okay. But those are the dates?

[19] A I don't know if they were the exact dates

[20] Q Okay.

[21] A But right around that timeframe, you're correct.

[22] Q Okay. And then you received some kind of notice [23] that she wants to return to work?

[24] A Correct.

[25] Q And if I suggest to you that Ms.O'Donnell

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[1] returned to work on June 11, 2003, does that comport with
 [2] your memories of that timeframe?
 [3] A No. I don't know when she came back to work.
 [4] Q Okay.
 [5] A The exact day or month.
 [6] Q Okay. Do you recall an incident where there was
 [7] vandalism to the mailroom?
 [8] A Yes.
 [9] Q And do you recall that was approximately five days
 [10] after Ms.O'Donnell's return to work?
 [11] A It was rather a short period of time. She came [12] back
 to work. Whether it was five days, but it did happen, [13] yes.
 [14] Q And the vandalism on the mailroom, strike that. [15] What
 was the vandalism on the mailroom?
 [16] A The vandalism was pornography. The exact wording,
 [17] I can't remember the exact wording. It was very
 [18] pornography-type wording towards Ms.O'Donnell.
 [19] The exact words now, I couldn't tell you the exact [20] words.
 [21] Q Okay. And was Ms.O'Donnell upset or emotionally
 [22] distressed over this incident?
 [23] A Yes.
 [24] Q And you, in fact, granted her administrative leave
 [25] because of that incident?

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[1] A Yes.
 [2] Q Did you then, do you recall whether you received [3] an
 additional doctor's note from Ms.O'Donnell again taking [4] her out
 of work?
 [5] A Yes.
 [6] Q Did Ms.O'Donnell ever provide you with further
 [7] medical documentation following that incident?
 [8] A I don't recall. I'm sorry.
 [9] Q Okay. Did, you already testified that you gave [10] her
 administrative leave because of that event?
 [11] A Yes.
 [12] Q And do you recall whether she applied for any [13] other
 type of leave?
 [14] Whether it be leave without pay or advanced sick [15] leave
 because of that event?
 [16] A I believe she applied for leave without pay.
 [17] Q And did you grant that request?
 [18] A No.
 [19] Q And why not?
 [20] A Because again, I think, well, I requested [21] additional
 medical documentation.
 [22] Q And she did not provide it to you?
 [23] A I don't recall if she did or she didn't.
 [24] Q Okay. Well if she had provided it to you, would [25] you
 have granted her leave without pay?

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[1] A I don't know. I would have to see the doctor's [2] note.
 [3] Q Okay.
 [4] MR. WILMOT: Would this be a good time to take a [5] quick
 break?
 [6] MS. MCDONALD: It would be a really good time so I [7] can
 straighten out my documents.
 [8] MR. WILMOT: Okay. Thanks.
 [9] (Off the record at 1:58 p.m.)
 [10] (On the record at 2:07 p.m.)
 [11] BY MS. MCDONALD:
 [12] Q What was your understanding of the accommodation
 [13] that Ms.O'Donnell and her attorney was requesting?
 [14] A At which time?
 [15] Q At any time.
 [16] A Well throughout the ordeal, was the removal of
 [17] Mr.Reynoso and she could come back to work.
 [18] Q Okay. The removal of Mr.Reynoso. What did you
 [19] take that to mean?
 [20] A The removal. The termination. To get, to remove [21] him
 from the institution.
 [22] Q Could he have been transferred to another
 [23] institution?
 [24] A No.
 [25] Q You don't have the authority to transfer staff?

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[1] A Well an investigation has not been completed. I [2] think
 he is innocent until proven guilty at this point.
 [3] Q Okay. Well, Ms.O'Donnell didn't get an attorney [4] until
 long after -
 [5] A Okay.
 [6] Q The incident, right?
 [7] A Okay.
 [8] Q And the investigation and his discipline was [9] following
 his court date, right?
 [10] A Correct.
 [11] Q And at his court date, he pled to sufficient facts [12] for
 finding of guilty, correct?
 [13] A Correct.
 [14] MR. WILMOT: Objection.
 [15] A Correct.
 [16] Q And the investigative report indicates that
 [17] Mr.Reynoso admitted to kicking Ms.O'Donnell, correct?
 [18] A Correct.
 [19] Q I forgot where I was going with this line of
 [20] questioning. Okay. Then her doctor gives you a note
 [21] following his plea saying that she is disabled and has post
 [22] traumatic stress disorder and can't come to work, correct?
 [23] A Yes.
 [24] Q At some point, she obtains an attorney?
 [25] A Correct.

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[1] MR. WILMOT: Objection.
 [2] Q And then either she or he begin requesting
 [3] "reasonable accommodations"?
 [4] MR. WILMOT: Objection.
 [5] BY MS. MCDONALD:
 [6] Q Do you recall that?
 [7] MR. WILMOT: Objection. You can answer.
 [8] THE WITNESS: Yes.
 [9] BY MS. MCDONALD:
 [10] Q I'm sorry. I'm so tired. The questions are not [11] coming
 out very well.
 [12] At that time, between subsequent to Officer [13] Reynoso
 pleading, making his plea, and Ms.O'Donnell being [14] out of
 work for medical reasons in or about January, [15] February of
 2003-?
 [16] A Okay.
 [17] Q What was the accommodation being requested at that
 [18] time?
 [19] MR. WILMOT: By whom are we talking about?
 [20] MS. MCDONALD: By either Ms.O'Donnell or her
 [21] attorney.
 [22] THE WITNESS: Around that time, I took the request [23] of
 accommodation to come back to work from Ms.O'Donnell.
 [24] The issue, I could do the best I could to accommodate her
 [25] and Mr.Reynoso.

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[1] I mean, I couldn't do, I had no other options but [2] to keep
 them separated.
 [3] BY MS. MCDONALD:
 [4] Q Did Mr.Reynoso have a disability?
 [5] A Not that I'm aware of.
 [6] Q Okay. Did he make any requests for an
 [7] accommodation?
 [8] A No.
 [9] MS. MCDONALD: Let me show you this document.
 [10] (Exhibit No. 26 marked for [11] identification.)
 [12] THE WITNESS: Okay.
 [13] BY MS. MCDONALD:
 [14] Q Have you seen that document before?
 [15] A Yes.
 [16] Q And what is that document?
 [17] A It's a doctor's note indicating Ms.O'Donnell [18] suffers
 from post traumatic stress disorder. Totally [19] disabled. Unable
 to return to work. If Reynoso is not at [20] work premises at all,
 Ms.O'Donnell would be able to return [21] full-time without
 restrictions.
 [22] Q And what is the date of this note?
 [23] A Up on top? 1-8-03.
 [24] Q Okay. And does this, do you recall whether this [25] was
 the first doctor's note that you received for

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[1] Ms.O'Donnell?
 [2] A No.
 [3] Q This is one of the two or three that you received, [4] right?
 [5] MR. WILMOT: Objection. You can answer.
 [6] THE WITNESS: I don't know how many doctor's notes
 [7] that I did receive. Every doctor's note that I receive, I [8] looked
 at it and reviewed it and made a decision on it. [9] This is just one
 of, I can't tell you, how many doctor's [10] notes I receive.
 [11] BY MS. MCDONALD:
 [12] Q In this doctor's note, does he say that Officer
 [13] Reynoso or Colleen's assailant as he calls him, has to be
 [14] terminated does it?
 [15] A No.
 [16] Q Okay. So following the vandalism on the mailroom
 [17] incident, you already discussed that Ms.O'Donnell was
 [18] again, out of work?
 [19] A Correct.
 [20] Q At some point following her absence, did she again
 [21] request to come back to work?
 [22] A I can't recall.
 [23] Q Well you didn't order her to come back to work, [24] did
 you?
 [25] A No.

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[1] (Pause)
 [2] (Exhibit No. 27 marked for [3] identification.)
 [4] MS. MCDONALD: I am going to show you a document.
 [5] THE WITNESS: Yes I know this document.
 [6] BY MS. MCDONALD:
 [7] Q And what is this document?
 [8] A It's a document from me to Colleen O'Donnell to [9] you;
 cc'd you November 18th, outlining a job site for her to [10] work at.
 It's also advising her that she could go to the [11] staff dining hall,
 free to go around the institution, and [12] enter the main institution
 and I put in a time limit to go [13] to work, or excuse me, to go the
 staff dining room.
 [14] Q Okay.
 [15] A And that you can work overtime.
 [16] Q What's the date of this document?
 [17] A November 18, 2003.
 [18] Q When you state in the first paragraph that's this [19] is a
 response to her first message of November 12th, where [20] she
 informed you that she would like to return to work.
 [21] Does that refresh your memory as to when she asked [22] to
 come back to work?
 [23] A That is correct.
 [24] Q And you received a note from her doctor releasing
 [25] her to full-time duty without any restrictions.

[1] Is that correct?
 [2] A Yes.
 [3] Q And you assigned her to the camp. Is that right?
 [4] A That's correct.
 [5] Q And you state in approximately the middle of the
 [6] second paragraph, in an effort to facilitate the orderly
 [7] running of the institution while still allowing Mr.Reynoso [8] to
 [9] comply with the terms of the order of protection, per [9] your
 [10] agreement, you will be reassigned as camp officer upon [10] your
 [11] return.
 [11] Do you see that?
 [12] A Yes.
 [13] Q But what agreement did Ms.O'Donnell make with you
 [14] that she would be assigned to the camp?
 [15] A There was a phone call made by her supervisor,
 [16] Mr.Gagnon asking her or requesting her however how he
 [17] mentioned, again, I advised him that if she was willing to
 [18] come back to work, you know, to have Mr.Gagnon call her
 [19] and [19] see if she would go to camp and at that particular time,
 [20] she [20] did agree to go to the camp.
 [21] Q And why did you want to assign her to the camp?
 [22] A I have, I don't know. It was a different [23] facility. She
 [23] was out of, well, when I say I don't know, my [24] recollection of
 [24] this event is Ms.O'Donnell had been out of [25] work for a period
 [25] of time.

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[1] Mr.Reynoso is on a job inside the institution, if [2] I remember
 [2] correctly.
 [3] Q On a job?
 [4] A Inside.
 [5] Q A specific assignment, do you mean?
 [6] A Well, he was working inside. Either the mailroom [7] or he
 [7] could have been working here at the time. I don't [8] recall where
 [8] his job assignment was.
 [9] Fifty yards from this institution is the camp. [10] That's why I
 [10] offered her the camp.
 [11] I couldn't offer her the mailroom. This is after [12] the incident
 [12] in the mailroom, if I'm not mistaken.
 [13] Q And when Ms.O'Donnell returned to work was she,
 [14] in fact, placed at the camp?
 [15] A I don't recall. I don't remember that.
 [16] Q Okay. I think I already asked you this but do you
 [17] have the authority to transfer a staff member to another
 [18] institution?
 [19] A No.
 [20] Q Who has the authority to do that?
 [21] A That would have to go through the Regional [22] Director
 [22] for approval.
 [23] Q Okay. Did you put restrictions on Ms.O'Donnell [24] with
 [24] regards to signing up for overtime?
 [25] A At the beginning or the end?

[1] Q At any time.
 [2] A I put restrictions on both of them to start out [3] with. I
 [3] wouldn't say restrictions, I would say limitation [4] duties to make
 [4] sure that fifty yard restraining order was in [5] effect and then later
 [5] on, they were lifted.
 [6] Q Why did the restrictions have to be put on both of
 [7] them?
 [8] Why not just put the restrictions on Officer [9] Reynoso?
 [10] A I felt only, it was put on Reynoso, but I felt [11] that both
 [11] staff members had an obligation to keep that fifty [12] yard
 [12] distance.
 [13] Both of them were aware of the restraining order. [14] I felt
 [14] you know, it was only fair that both of them should [15] abide by
 [15] that restraining order.
 [16] It's both responsibility in my mind that if either [17] one came
 [17] into contact with one another within that fifty [18] yards, they
 [18] needed to report it.
 [19] Q So you believe that Colleen was responsible for
 [20] ensuring that the restraining was enforced?
 [21] A No. I believe she had an obligation that she was
 [22] aware of the restraining order. That if she did come in
 [23] contact, I couldn't guarantee a fifty yard distance no
 [24] matter if I put them in the mailroom, the camp or the
 [25] institution.

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[1] I couldn't guarantee. I could just do the best [2] job I could of
 [2] implementing that restraining order. But I [3] couldn't stop one or
 [3] the other party from bumping into one [4] another for whatever
 [4] reason and I felt a staff person, each [5] staff person has an
 [5] obligation and that they both knew what [6] the restraining order
 [6] was.
 [7] So in making decisions on jobs, my job is to make [8] sure
 [8] everybody is safe and that is what I felt most [9] comfortable with.
 [10] Q So you could never ensure that the restraining [11] order
 [11] would be complied with. You could only do the best [12] that you
 [12] could?
 [13] A That's correct. I couldn't stop one of them from
 [14] bumping into one another. If they chose to do that.
 [15] (Exhibit No. 28 marked for [16] identification.)
 [17] MS. MCDONALD: Okay. Let me show you this.
 [18] THE WITNESS: Okay.
 [19] BY MS. MCDONALD:
 [20] Q Do you recall that document?
 [21] A Yes I do.
 [22] Q What is that document?
 [23] A The, it was a memo to Colleen and there was a memo
 [24] to Reynoso. This memo is to Colleen, indicating that the
 [25] Abuse and Prevention Order against David Reynoso was
 [25] vacated

RSA

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[1] and that accordingly, all parties involved would now be
 [2] placed on regular duty status.
 [3] There would be no further accommodations regarding [4] this matter.
 [5] Q And what is the date of this letter?
 [6] A April 23, 2004.
 [7] Q And what was the date that the Abuse and [8] Prevention Order was vacated?
 [9] A I don't have it in front of me. I don't know.
 [10] Q In the first line?
 [11] A Oh, okay. On April 27th.
 [12] Q 2004?
 [13] A 2004.
 [14] Q So from April 9 of 2002 through April 22, 2004,
 [15] Officer Reynoso was subject to an Abuse Prevention Order, a [16] restraining order?
 [17] A That's correct.
 [18] Q And once that restraining order was lifted, there [19] were no further accommodations made concerning this matter?
 [20] MR. WILMOT: Objection. You can answer.
 [21] THE WITNESS: Not that I'm aware of.
 [22] MS. MCDONALD: Okay. I think I'm almost done. If [23] you want to take a five minute break to see if I've got [24] anything else?
 [25] MR. WILMOT: Is that what - okay.

[1] A April 20, 2004 and she signed on it on April 19, [2] 2004.
 [3] Q Okay. And you received this proposal?
 [4] A I received
 [5] Q Did you receive this proposal?
 [6] A Yes.
 [7] Q And did Ms. O'Donnell respond to this proposal?
 [8] A Yes she did.
 [9] Q Did you take into account her response in
 [10] determining what discipline she should be administered?
 [11] A Yes.
 [12] (Exhibit No. 30 marked for [13] identification.)
 [14] MS. MCDONALD: Let me show you this document.
 [15] THE WITNESS: Okay.
 [16] BY MS. MCDONALD:
 [17] Q And do you recognize this document?
 [18] A Yes.
 [19] Q And what is this document?
 [20] A This is Notice of Proposed Suspension Notification
 [21] that I give staff that I considered the case and that - [22] It's a decision letter.
 [23] Q And what was your decision with regard to
 [24] Ms. O'Donnell's AWOL charges?
 [25] A Ms. O'Donnell brought up, my decision was based on

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[1] MS. MCDONALD: Okay.
 [2] (Off the record at 2:29 p.m.)
 [3] (On the record at 2:42 p.m.)
 [4] BY MS. MCDONALD:
 [5] Q Was there an investigation conducted when
 [6] Ms. O'Donnell returned to work in November 2003 in regard to
 [7] her AWOL?
 [8] A Yes.
 [9] Q And who conducted that investigation?
 [10] A I'm not sure.
 [11] (Exhibit No. 29 marked for [12] identification.)
 [13] MS. MCDONALD: Okay. Let me show you this
 [14] document.
 [15] THE WITNESS: Okay.
 [16] BY MS. MCDONALD:
 [17] Q Do you recognize that document?
 [18] A Yes.
 [19] Q What is that document?
 [20] A It's a proposal for a thirty day suspension for
 [21] excessive, unauthorized absence, failure to follow leave
 [22] procedures.
 [23] Q To Ms. O'Donnell?
 [24] A Correct.
 [25] Q And what is the date of-

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[1] Ms. O'Donnell's response to me which was she had a medical
 [2] condition that she did not want staff to be aware of and I
 [3] told her that if she could provide me medical documentation,
 [4] I would take that into consideration and be held [5] confidential and she brought in the doctor's note. It was [6] held confidential.
 [7] That's what I took into consideration and that's [8] why I gave her the letter of reprimand instead of the thirty [9] day suspension.
 [10] Q So she readily provided you with medical
 [11] documentation when you discussed the issue with her?
 [12] A At that particular time, yes.
 [13] Q And did she relate to you that she had been [14] advised not to provide medical documentation previously?
 [15] A I don't know if it was during that period of time. [16] She did mention that she, I think it was during that time, [17] that she said got bad advice from her attorney.
 [18] Q Not me, right?
 [19] A Mr. Rizzitelli. Let's clarify that.
 [20] MS. MCDONALD: Thank you.
 [21] (Exhibit No. 31 marked for [22] identification.)
 [23] THE WITNESS: Okay.
 [24] BY MS. MCDONALD:
 [25] Q Do you recognize that-

[1] A Yes.
 [2] Q Document?
 [3] A Yes.
 [4] Q And what is that document?
 [5] A This is just to notify her that my decision in, to [6] let her know what my decision was in writing and to close [7] out the case.
 [8] Q And is this her actual letter of reprimand that [9] was placed in her personnel file?
 [10] A Yeah, uh, I don't know.
 [11] Q It says that a copy of this letter will remain in [12] her personnel file.
 [13] A Is it there or not, I don't know. I'm sorry.
 [14] Q Oh, that's okay. Maybe I wasn't clear. I just [15] wanted to know if this was the actual discipline letter?
 [16] A This should be the actual discipline letter.
 [17] Q So there was no suspension, there was simply this [18] letter placed in her file?
 [19] A That's correct.
 [20] MS. McDONALD: Okay. I'm done.
 [21] EXAMINATION BY MR. WILMOT:
 [22] Q Okay, I've just got a couple of questions. You [23] testified earlier begin as Warden in December of 2002, [24] correct?
 [25] A No.

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[1] Q When did you begin as Warden, I'm sorry, of FMC [2] Devens?
 [3] A December 2000.
 [4] Q 2000, sorry. Did you actually hire Officer [5] Reynoso?
 [6] A No.
 [7] Q He was here before you began as Warden?
 [8] A Yes.
 [9] Q Jumping forward to the April 8, 2002 incident. [10] You testified that you changed Officer Reynoso and [11] Ms.O'Donnell's work schedules.
 [12] Do you remember that testimony?
 [13] A Yes.
 [14] Q Can you state again why you changed their [15] schedules?
 [16] A The reason I changed their schedules was when I [17] received the restraining order and the alleged assault, [18] that's when I decided I had to separate both parties from [19] different job areas or different job sites.
 [20] Q Do you remember what you changed Ms.O'Donnell's [21] schedule to?
 [22] A Ms.O'Donnell was working day shift and so I [23] changed her schedule by half an hour.
 [24] Q Do you know to what times?
 [25] A I think if I recall correctly she worked from 7:00

[1] to 3:30 and I changed Mr.Reynoso's schedule, he was working [2] day shift. I moved him to day shift to night shift. Night [3] shift from 4:00 to 12:00.
 [4] Q I am going to show you what has been previously [5] identified by Ms.O'Donnell in her deposition. This is [6] Exhibit No. 29.
 [7] Do you recognize that document?
 [8] A Yes I do.
 [9] Q And can you identify what it is.
 [10] A It's changing of the schedule. And actually I [11] changed it in accordance with this document.
 [12] She was working Monday through Friday shift, but I [13] did change the time from 6:00 a.m. to 2:30 p.m.
 [14] Q Okay. So based on this document, it shows that [15] Ms.O'Donnell's schedule was changed to that, 6:00 to, I'm [16] sorry?
 [17] A 2:30 p.m.
 [18] Q To 2:30. Okay. And does that document state [19] anything else as to limitations or changes with regard for [20] assignment you made?
 [21] A Yes it does.
 [22] Q What else does it say?
 [23] A It states that if you plan to work outside these [24] hours for any reason, overtime, you must notify your [25] supervisor prior to working.

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[1] You are not to contact in person or telephonically [2] or associate with David Reynoso, Intelligence Officer at any [3] time.
 [4] The schedule will remain in effect until further [5] notice.
 [6] Q Okay. So, anything else in this document that you [7] - any changes that you made to Ms.O'Donnell's assignment.
 [8] A No.
 [9] Q Okay. So based on that document, in your memory, [10] the only changes you made to Ms.O'Donnell's assignment here [11] at FMC Devens, was with regard to her schedule and her [12] requirement to notify supervisors that when she wanted to [13] perform overtime work.
 [14] A That's correct.
 [15] Q Do you also, did you also limit her to work in the [16] mailroom?
 [17] A Yes.
 [18] Q Does that letter state that?
 [19] A Yes.
 [20] Q Okay. So the changes you made with regard to [21] Ms.O'Donnell was that one, she had to continue to work in [22] the mailroom, the changes in her time as you said, the half [23] hour change and that she had to notify supervisors when she [24] wanted to work overtime?
 [25] A That is correct.

BSA

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- [1] Q Anything else, any other restrictions or [2] limitations that you - or changes that you placed on [3] Ms.O'Donnell's work here at FMC Devens?
- [4] A No.
- [5] Q Did her pay change in any way?
- [6] A No.
- [7] Q Did her access to certain benefits change in any [8] way?
- [9] A No.
- [10] MR. WILMOT: Okay. Could you mark this? I am [11] going to show you what has been marked as Winn Exhibit No. [12] 33. (Exhibit No. 33 marked for [14] identification.)
- [15] BY MR. WILMOT:
- [16] Q Do you recognize that document?
- [17] A Yes.
- [18] Q Can you identify what it is?
- [19] A It's a letter to Mr.Reynoso regarding his [20] schedule and assignment.
- [21] Q And does that document - any changes, if any, [22] that you made with regard to Mr.Reynoso's work here at FMC [23] Devens?
- [24] A Yes.
- [25] Q Can you identify for me what changes were made to

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- [1] Mr.Reynoso's work at FMC Devens that are documented in that [2] Exhibit No. 33?
- [3] A At the time of the incident, he was working day [4] shift. So I changed him from day shift to evening shift.
- [5] Q Until what time?
- [6] A His day shift was, could have been 7:30 to 4:00 or [7] 8:00 to 4:00. His, I don't know what his days off were at [8] the time but I put him on a Monday through Friday schedule [9] from 4:00 p.m. to 12:00 p.m. and also not to arrive at the [10] institution prior to 3:30 p.m.
- [11] He would not be permitted to work an armed post [12] until resolution of the pending criminal charges against [13] him.
- [14] If he planned to work outside these hours of [15] overtime again, he would have to notify his supervisor prior [16] to the shift.
- [17] He wasn't to contact in person or telephonically [18] or associate with Colleen O'Donnell at any time.
- [19] Q Okay. Would it be a fair statement for me to make [20] that other than the limitations on their physical location [21] here at FMC Devens, that the changes that you made with [22] regard to Mr.Reynoso and Ms.O'Donnell's work here at FMC [23] Devens was identical?
- [24] A Yes.
- [25] Q Okay. And just to refer back to Colleen Exhibit

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- [1] No. 29, anywhere in this letter does it say that [2] Ms.O'Donnell was prevented from working overtime?
- [3] A No.
- [4] Q Okay. What were the effective dates of or - [5] well, let me break them up.
- [6] What was the effective date of Ms.O'Donnell's, [7] the changes to Ms.O'Donnell's work here at FMC Devens?
- [8] A April 15, Monday, April 15, 2002.
- [9] Q What was the effective date of the changes to [10] Mr.Reynoso's work here at FMC Devens?
- [11] A Monday, April 15, 2002.
- [12] Q Now the incident occurred on April 8, 2002. [13] Correct?
- [14] A Correct.
- [15] Q Why was there - what happened in between or [16] strike that.
- [17] Why didn't the changes go into effect immediately, [18] I guess, after April 8, 2002 or it looks like there's about [19] a week lapse in time?
- [20] A Both of them were given either annual leave or [21] administrative leave until that particular day of Monday, or [22] their days off coincided with the admin leave or regular [23] leave.
- [24] Therefore, I knew both of them would not come to [25] the institution and the Workplace Violence Committee had met

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- [1] and the investigation had been forwarded.
- [2] The restraining order was received and I knew [3] basically the facts of the case and I knew I had some time [4] to devise a plan to make it safe for both individuals to [5] come into the institution and that was the date that they [6] came back to work.
- [7] Q Okay. So just so I'm clear, is it your testimony [8] that after April 8, 2002, neither Mr.Reynoso or [9] Ms.O'Donnell returned to work that work week?
- [10] A That is correct. That I'm aware of.
- [11] Q And they both returned back to work, returned back [12] to duty on April 15, 2002?
- [13] A That's correct.
- [14] Q When they returned back to work on April 15, 2002, [15] is that the date that these changes to their work began?
- [16] A That is correct.
- [17] Q So when, for example, Mr.Reynoso returned back to [18] work on April 15, 2002, he returned to this new shift?
- [19] A That is correct.
- [20] Q Okay. When you made the decision to change [21] Ms.O'Donnell's work schedule by the half hour as you [22] testified, and to limit her to the mailroom and required her [23] to notify her supervisor if she wanted to work overtime, was [24] her sex or gender a factor in that decision?
- [25] A No.

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[1] Q Okay. Now you gave some testimony before. I'll [2] just see those exhibits there. Thank you.

[3] You gave some testimony before about the Workplace Violence Committee.

[4] Do you remember that testimony?

[5] A Yes.

[6] Q And you said then that you received [8] recommendations from them and that thereafter, you received [9] the Protective Order.

[10] Do you remember that testimony?

[11] A Yes.

[12] Q Let me show you what you have already testified to [13] and has been marked as Exhibit 4 and 5.

[14] Just bring your attention first to Exhibit 5 which [15] you identified earlier as the first recommendations from the [16] Workplace Violence Committee that was convened after this [17] April 8, 2002 incidence.

[18] Do you know when you received this memo?

[19] A This memo?

[20] Q Exhibit 5, yes?

[21] A That morning.

[22] Q That morning. Which morning would that be?

[23] A On April 9, 2002.

[24] Q And the second memo that you identified which has [25] been marked as Exhibit 4 and it's the second memo from the

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[1] Workplace Violence Committee, do you know when you received [2] that memo?

[3] A April 9, 2002.

[4] Q So you received them both on the same day?

[5] A Right. Yes.

[6] Q Now do you know whether or not the Workplace Violence Committee had in its possession or was aware that [7] there was a protective order entered with regard to [8] Ms.O'Donnell and Mr.Reynoso?

[9] A At this time when I received these, no.

[10] Q Okay. So they did not have the restraining order?

[11] A No. But if I had them, they would have received; [13] the committee would have received the restraining order.

[14] Q So they made these recommendations to you not [15] knowing there was a restraining order issued with regard to [16] Ms.O'Donnell and Mr.Reynoso?

[17] A That's correct.

[18] Q Okay. All right. Let me show you that has been [19] previously identified by Ms.O'Donnell and you identified [20] the same document here today. In the O'Donnell deposition, [21] it is Exhibit 27.

[22] And this is the restraining order that you [23] testified to that was issued on April 9, 2002.

[24] Were there, can you identify for me whether or not [25] on that order, the Court, strike that.

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[1] There's some handwritten language here on the [2] order.

[3] Do you see that?

[4] A Yes.

[5] Q What does that say?

[6] A You may lawfully attend work but must remain fifty [7] yards from the plaintiff.

[8] Q Okay. So what was your understanding of that [9] statement when you read it?

[10] A That Mr.Reynoso could return to work. But must [11] remain fifty yards from Ms.O'Donnell.

[12] Q when you decided to change the schedules of [13] Ms.O'Donnell and Mr.Reynoso in the way that you did make [14] the changes, did you do that, did you make that decision [15] before or after you received the restraining order from the [16] Court?

[17] A I made that decision when I received that [18] restraining order.

[19] Q Okay. You also testified before as to, you stated [20] before that an investigation of an incident like this would [21] not occur until after adjudication.

[22] Why is that?

[23] A The investigation would be initiated until after [24] the adjudication based upon if the person was found [25] innocent, then we would have to - if he was found guilty

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[1] during the investigation but then found innocent at the [2] Court hearing, we would have to go back and provide back pay [3] and benefits to that employee.

[4] So the Bureau waits until after adjudication and [5] the final disposition in the Court hearing before initiating [6] an investigation.

[7] Q Okay. Now it wasn't until almost the following, [8] the beginning of the next year that the investigation [9] started.

[10] Is that correct?

[11] A That's correct.

[12] Q And you just stated as to why the Bureau waits [13] until after the adjudication.

[14] Was that delay in the beginning of the [15] investigation, did it have anything to do with the fact that [16] Ms.O'Donnell is a woman?

[17] A No.

[18] Q Okay. Now you identified previously some memos [19] that you received from Ms.O'Donnell.

[20] (Pause)

[21] And they're marked as Exhibits 15 and 16. Exhibit [22] 15 is the memo you identified from Ms.O'Donnell's that's [23] dated May 13, 2002 and Exhibit 16 is the memo you identified [24] from Ms.O'Donnell dated June 10, 2002. Both which you said [25] that at some point, you received as you became aware of.

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[1] After this second memo, Exhibit 16, June 10, 2002, [2] did Ms. O'Donnell ever complain to you again about the fact [3] that she was working at the Bureau and Mr. Reynoso was still [4] employed and allowed to work here at the Bureau of Prisons? [5] A No.

[6] Q Did she ever complain after this June 10, 2002 [7] memo about the conditions under which she had to work? [8] A No.

[9] Q Did you hear anything else from Ms. O'Donnell [10] after this memo concerning this incident or you know, the [11] circumstances surrounding she and Mr. Reynoso? [12] A No, I, not me. She never said anything to me.

[13] Q Okay. Do you remember when you next heard any [14] additional, anything new or any new complaints or issues [15] arising out of the situation between she and Mr. Reynoso? [16] The next time?

[17] A The only other complaint was everything was going [18] fine. The situation was going fine. The only other [19] complaint was the mailroom incident in June. I think it was [20] June.

[21] Q The mailroom incident? [22] A Yeah.

[23] Q What do you mean the mailroom incident? [24] A Where there was righting on the wall.

[25] Q All right.

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[1] A She didn't approach me about it. But there were [2] rumors that she was accusing Reynoso of doing that.

[3] Q Well, that didn't happen the same year as the [4] incident, correct? [5] A Right.

[6] Q And prior to the mailroom incident as you call it, [7] and I think you gave some testimony to this.

[8] Before that, you did have the issue of when there [9] was a hearing with regards to Mr. Reynoso, correct? [10] A I'm sorry. Repeat the question.

[11] Q Was there a hearing with regards to Mr. Reynoso [12] about the allegations that Ms. O'Donnell made that he kicked [13] by Mirror Lake? [14] A Was there a hearing?

[15] Q correct. Let me show you a document here. I am [16] going to show you what has been previously identified as [17] Exhibit 37.

[18] Ms. O'Donnell identified that document at her [19] deposition and it identifies that on January 3, 2003 that [20] there was a hearing on the charges that were filed against [21] Mr. Reynoso? [22] A Correct, there was a hearing.

[23] Q Okay. So in answer to my question, the memo that [24] is marked as Exhibit 16 which is June 2002, between the time [25] of this memo and this hearing which occurred in January

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[1] 2003, did you hear anything from Ms. O'Donnell direct or [2] indirectly, concerning the circumstances surround she and [3] Mr. Reynoso working here at FMC Devens? [4] A No.

[5] Q And how did you become aware of the hearing [6] concerning the charges against Mr. Reynoso? [7] A Rumors were flowing around the institution. I [8] know there was a hearing date. And I got the final [9] disposition through my, not my, but the Bureau's attorney [10] requesting the Court document which we had to pay for.

[11] Q And when did you learn of the disposition of the [12] charges against Mr. Reynoso? [13] A I'd have to, well, it was that day or the day [14] after.

[15] Q Okay.

[16] A I don't know the exact date.

[17] Q Okay. Now after that incident, or after that [18] hearing on January 3, 2003, did you speak to Ms. O'Donnell [19] around that time? [20] A Not that I recall. No.

[21] Q Was Ms. O'Donnell working at that time? January [22] 3, 2003? [23] A No.

[24] Q Where was she? [25] A She had been on leave without pay, sick leave,

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[1] annual leave or day off.

[2] Q The day of the incident, I mean, the day of the [3] hearing? [4] A Correct. To the best of my knowledge.

[5] Q And did she return to work at some, soon [6] thereafter or the day after the hearing, was she back here [7] at work? [8] A I don't remember seeing Colleen O'Donnell that [9] week.

[10] Q The week of the hearing? [11] A Right.

[12] Q Okay. Let me show you what has been previously [13] identified in Colleen's deposition as Exhibit 39. The [14] January 8, 2003 letter from you to her.

[15] Do you recognize that document? [16] A Yes.

[17] Q And what are you stating in that letter? [18] A I'm stating that effective Monday, January 13, [19] 2003; you will be assigned you regular duties at ISM.

[20] Your scheduled duties will be Monday through [21] Friday, 9:30 a.m. to 6:00 p.m. If you plan to work outside [22] these hours for any reason, you must notify your supervisor [23] in advance.

[24] This schedule and restrictions will remain in [25] effect until further notice.

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[1] Q Now there's a blank line there for a signature. [2] Whose signature was that line made for?

[3] A For Ms.O'Donnell.

[4] Q I notice it's blank. Do you know if this letter [5] was communicated to Ms.O'Donnell, delivered to her, sorry?

[6] A I don't know if it was delivered or not. She [7] received this letter.

[8] Q Okay. If I told you that Ms.O'Donnell had [9] testified that after the hearing on January 3, 2003, she did [10] not return back to work.

[11] Would that comport to your memory or refresh your

[12] memory as to what happened at that time?

[13] A On January, was it January 3rd?

[14] Q Mm-hmm.

[15] A I don't know if she reported back to work or not. [16] I don't recall.

[17] Q Okay. I am going to show you what has been

[18] previously identified as Colleen Exhibit No. 40.

[19] It is an exhibit in your deposition today. I just [20] can't find it at this time. But Colleen's Exhibit No. 40 is [21] a - she previously identified as well as I believe you did, [22] a January 8, 2003 note from Dr.George Milowe?

[23] A Okay.

[24] Q Now does that refresh your memory whether or not

[25] Colleen was working or was out of work early January 2003?

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[1] A Well, according to this memo or according to this

[2] doctor's note she was unable to work and it was dated

[3] January 8, 2003. So given that period of time, she was not

[4] able to work. So she couldn't have been at work.

[5] Q Okay. I found the exhibit that I wanted to refer [6] to that was introduced today. The one you just referred to [7] was Colleen Exhibit No. 40 which is the same as your Exhibit [8] No. 27.

[9] You also gave testimony as to Exhibit 19. There [10] was some confusion as to what was the first doctor's note [11] that you received concerning Ms.O'Donnell.

[12] On Exhibit No. 27, can you identify what the date [13] is of that note?

[14] A January 8, 2003.

[15] Q And what is the date on Exhibit No. 19?

[16] A January 31, 2003.

[17] Q Okay. Does that refresh your memory as to which

[18] note you received first?

[19] A I received this one first. The Exhibit 27 first.

[20] Q Okay. And what did you with Exhibit No. 27 when

[21] she received it?

[22] A What this note was given, if I'm not mistaken, to [23] a staff psychiatrist on January 8, 2003 for interpretation.

[24] Q And who is that psychiatrist that you gave it to?

[25] A Dr.Fletcher.

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[1] Q Do you know if he responded to Colleen with [2] regards to that note?

[3] A Did he respond or did I?

[4] Q Did you or anyone at your direction respond to

[5] Colleen with regards to that note dated January 8, 2003?

[6] A We responded requesting additional medical

[7] information.

[8] Q When you say we, can you identify who?

[9] A I can't remember.

[10] Q Okay. I am going to show you what is marked as

[11] Colleen Exhibit No. 41. I will present to you that Colleen

[12] identified that in her deposition.

[13] It's a memo from Steve Gagnon to her dated January [14] 9, 2003.

[15] A That's correct.

[16] Q Can you read that or have you read it?

[17] A I've read it.

[18] Q Okay. And that memo refers to a phone

[19] conversation with Ms.O'Donnell on January 9, 2003.

[20] A I, actually, well, Steve explained to her that I [21] wanted more written, I wanted a release from her doctor so [22] our doctor at the institution could speak to her doctor [23] regarding the medical documentation received which was the [24] January 8th one.

[25] The reason I wanted that, the reason was to

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[1] adequately address her, any accommodation or whatever that

[2] she requested.

[3] Q Okay. And what time does Steve Gagnon say that he

[4] spoke with Colleen requesting that additional information?

[5] A Approximately 8:45 a.m.

[6] Q Okay. Do you know what time you received the note

[7] from Ms.O'Donnell's doctor which was dated January 8, 2003?

[8] A I never received any note.

[9] Q The note that you identified as Exhibit 27?

[10] A Oh, when did I receive this note? January 8, [11] 2003.

[12] Q Do you remember what time of day you received

[13] that?

[14] A No, I don't recall the time of day.

[15] Q At the top of there, there is a fax line. Do you [16] see that?

[17] A Yes.

[18] Q What is the time of the fax?

[19] A 18:20.

[20] Q What would that be in -

[21] A 18:20 has got to be around 6:20, is that right?

[22] Military time.

[23] Q 18:20 will be military time, right?

[24] MS. MCDONALD: Aren't you supposed to know that?

[25] THE WITNESS: This isn't military. Let's see.

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[1] MR. WILMOT: 6:20?
 [2] THE WITNESS: Yeah.
 [3] BY MR. WILMOT:
 [4] Q So Steve called her the next morning. What time [5] does Steve get in in the mornings or what time did he get in [6] in the morning at that time?
 [7] A He works day shift so I would assume 7:00, 7:30 to [8] 4:00.
 [9] Q Okay. Let me show you what has been previously [10] identified as Exhibit 42 in Ms.O'Donnell's deposition and I [11] represent to you that Ms.O'Donnell identified that document [12] as a letter from Cindy Lord to her dated January 9, 2003.
 [13] Can you take a second to just read what that [14] document says?
 [15] A Okay.
 [16] Q What does the first page of that document, what is [17] it stating?
 [18] A Basically it's saying we're requesting [19] authorization to contact the physician to release [20] information to us so we can determine medical or physical [21] ability to safely perform essential functions of her [22] position at ISM.
 [23] And it says please sign and return attached [24] release letter no later than January 15, 2003.
 [25] Q Okay.

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[1] A If you do not sign and return the release, we will [2] base further decisions regarding your ability to safely [3] perform your essential functions of your position on the [4] information that is currently available and there is an [5] attachment for her to sign.
 [6] Q Okay. So after receiving the note from Dr.Milowe [7] on January 8, 2003, Cindy Lord and Steve Gagnon contacted [8] her. Gagnon verbally on the telephone and Cindy by letter [9] in response to that note, correct?
 [10] A Correct.
 [11] Q And did they do so at your direction?
 [12] A Yes.
 [13] Q Okay. Do you know if Ms.O'Donnell responded to [14] either, strike that.
 [15] Do you know if Ms.O'Donnell provided the [16] information sought by Steve Gagnon in that phone call that [17] he documents soon after that conversation?
 [18] A No, we didn't receive any documentation.
 [19] Q Do you know if Ms.O'Donnell responded to [20] Ms.Lord's letter dated January 9, 2003?
 [21] A No, she did not respond.
 [22] Q Okay. Now you gave some testimony earlier. Let [23] me try to clear some of this stuff.
 [24] Before I go there, let me show you what you [25] earlier spoke about. This is Exhibit 19. You identified it

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[1] as a letter from Dr.Milowe to Steve Gagnon?
 [2] A Correct.
 [3] Q Now that letter is from Colleen's doctor, correct?
 [4] A Correct.
 [5] Q Can you identify for me what accommodation the [6] doctor claims Colleen needed in order to return back to [7] work?
 [8] A Working in the same environment as her assailant [9] merely intensifies her symptoms and does not give her a [10] chance to heal. Common sense and good will would dictate [11] that Ms.O'Donnell not be required to work in the same [12] facility, at the same time as Mr.Reynoso.
 [13] And then it goes on, she receives good therapy [14] from me and sees a psychotherapist as well. However, [15] recovery is unlikely until the two are separated and [16] Ms.O'Donnell is allowed to go through the hearing process. [17] Until then she will remain totally disabled.
 [18] Q I want you to focus on the second sentence of that [19] paragraph. Particularly, the latter part. Where the doctor [20] says Ms.O'Donnell, he says that she should not be made to [21] work at the same facility at the same time as Mr.Reynoso.
 [22] Do you see that?
 [23] A Yes.
 [24] Q Now, I understand that Ms.O'Donnell was out at [25] that time but if she were back at work, would she have been

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[1] working at the same facility, at the same time as [2] Mr.Reynoso?
 [3] A No. Not in accordance with this doctor's note.
 [4] Q I'm sorry?
 [5] A No.
 [6] Q Not according to--?
 [7] A Well, number one, I couldn't, I couldn't separate [8] them in accordance with this doctor's note. The same [9] facility.
 [10] Q Well, maybe you're not following me?
 [11] A Okay.
 [12] Q You had already made certain changes with regards [13] to Mr.Reynoso and Ms.O'Donnell's work here at FMC Devens, [14] correct?
 [15] A Correct.
 [16] Q And so the question is if Ms.O'Donnell was at [17] work at this time, January 31, 2003, under what changes [18] would she be working under had she been at work?
 [19] MS. MCDONALD: Objection.
 [20] BY MR. WILMOT:
 [21] Q Do you understand the question? I'll ask it a [22] different way.
 [23] If Ms.O'Donnell was working on January 31, 2003, [24] what would have been her schedule?
 [25] A Her schedule would have been the same as

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- [1] initially. That I gave her initially.
 [2] Q Which was what?
 [3] A Working in the mailroom and Mr.Reynoso would have
 [4] been working in an area in the institution or vis-a- versa. [5] It
 could have changed but they both would have been working [6] in
 the same facility.
 [7] Q If Ms. - you said Ms.O'Donnell would be in the
 [8] mailroom. What times would she have been working?
 [9] A She would have been working 6:00 to 2:30.
 [10] Q And where would Mr.Reynoso have been working
 [11] January 31, 2003?
 [12] A He would have been working in this facility on
 [13] evening watch.
 [14] Q When you say this facility, what do you mean?
 [15] A The inside of the institution, away from the [16] mailroom.
 [17] Q What would his times have been?
 [18] A 4:00 to 12:00.
 [19] Q Okay. So if Ms.O'Donnell was working January 31,
 [20] 2003, under the time and the locations which you just
 [21] specified, would you agree with me that she would not have
 [22] been working at the same facility at the same time as
 [23] Mr.Reynoso?
 [24] A I would agree with that.
 [25] Q Okay.

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- [1] (Pause)
 [2] Now you gave some testimony as to - these letters [3] here.
 Winn Exhibit 21 is a letter from Mr.Rizzitelli to [4] you dated
 February 10, 2003.
 [5] Winn Exhibit 22, is the same letter but there's [6] the watermark
 or whatever you want to call it stating that [7] no response
 received, resent February 18, 2003.
 [8] And the last Winn Exhibit 23, same letter again, [9] with the
 exception of the watermark stating no response [10] received,
 resent March 3, 2003.
 [11] Why didn't you respond to, well strike that. [12] Between the
 time of February 10, 2003 which is Exhibit 21 [13] and Exhibit 22
 which states that it was resent February 18, [14] why didn't you
 respond to Mr.Rizzitelli's February 10, 2003 [15] letter in that
 timeframe?
 [16] A Because I didn't have, the reason I didn't respond
 [17] was because I didn't have written permission from Colleen to
 [18] pass to, to provide information to Rizzitelli.
 [19] Q Okay. And then in the last letter, Exhibit 23, [20] between
 the timeframe of February 18, 2003, the date of [21] Exhibit 22,
 why didn't you respond to Mr.Rizzitelli's in [22] that timeframe?
 [23] A I had yet to receive permission to provide [24] Mr.Rizzitelli
 information regarding Ms.O'Donnell.
 [25] Q Do you remember when you received authorization

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- [1] from Ms.O'Donnell that Mr.Rizzitelli was indeed her
 [2] counsel?
 [3] A I don't remember the exact date. It was some time [4] in
 March.
 [5] Q I am going to show you what was previously [6] identified
 as Colleen Exhibit 53. I will represent to you [7] that Ms.O'Donnell
 identified that document as the letter in [8] which she identifies
 Mr.Rizzitelli as her lawyer.
 [9] What is the date of that document?
 [10] A March 4, 2003.
 [11] Q Okay. And can you just repeat again the date of [12] the
 last letter in the sequence that we just went through in [13] the last
 three letters when that was sent?
 [14] A March 10, excuse me, February 10.
 [15] Q No, it would be the watermark date?
 [16] A March 3, 2003.
 [17] Q Okay. So you received the written notification [18] from
 Ms.O'Donnell after Mr.Rizzitelli sent this last [19] letter which is
 dated March 3, 2003?
 [20] A That is correct.
 [21] Q And once you received this letter from [22] Ms.O'Donnell
 which is Exhibit 53, did you then respond to [23] Mr.Rizzitelli?
 [24] A Yes I did.
 [25] Q Okay. I'm just referring your attention back to

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- [1] Exhibit 18. The document that you stated earlier that you
 [2] had not seen before.
 [3] I am going to show you what was marked as Exhibit [4] 48 in
 Ms.O'Donnell's deposition.
 [5] Do you recognize that document or can you identify [6] what it
 is?
 [7] A It's a Request for Voluntary Leave Transfer.
 [8] Q If you flip to the second page of that document, [9] And
 can you compare that page to what was marked as Exhibit [10] 18
 in your deposition today.
 [11] A They're the exact same.
 [12] Q So Exhibit 18 of your deposition today is the [13] second
 page of Colleen Exhibit No. 48?
 [14] A That is correct.
 [15] Q Okay. And you said that Exhibit No. 48 of [16] Colleen's
 deposition is a Request for Voluntary Leave [17] Transfer.
 [18] What involvement, if any, do you have in the [19] Voluntary
 Leave Transfer application process or decision [20] with regard to
 those applications?
 [21] A That's an independent committee that gathers to
 [22] look at documents and approve or deny any kind of leave
 [23] transfer program.
 [24] I don't have any input on that.
 [25] Q Okay. Are you aware that the Voluntary Leave

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- [1] Transfer Committee that met with regard to Colleen's
 [2] application, denied her request?
 [3] A I knew it was denied, yes.
 [4] Q What role, if any, did you play in that [5] Committee's
 decision to deny her request?
 [6] A I didn't have any role.
 [7] Q I'll show you what was marked in Colleen's [8] exhibit, I
 mean, deposition as Exhibit No. 52.
 [9] Do you recognize that document?
 [10] A Yes.
 [11] Q Could you identify what it is for me please?
 [12] A Ms.O'Donnell is requesting advanced leave,
 [13] advanced sick leave.
 [14] Q Do you remember what your response was to that
 [15] request for leave?
 [16] A I denied her leave request.
 [17] Q Do you remember why you denied her leave request?
 [18] A Based upon the doctor's note, she was unable to
 [19] return to work and there was no end of her medical
 [20] condition. Therefore, it was denied based upon that and I
 [21] didn't get any update on her medical condition.
 [22] Q Let me show you what was previously marked and
 [23] identified. This Exhibit No. 54.
 [24] Do you recognize that document?
 [25] And when I say 54, that's 54 from Colleen's

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- [1] deposition.
 [2] A Yes.
 [3] Q And what is that letter?
 [4] A It's a letter from Ms.O'Donnell indicating that I [5] denied
 her request for advanced sick leave.
 [6] Based upon your offer of accommodations to work. [7] Based
 on information, excuse me, on January 27th, you were [8] offered
 accommodations to work, based on the information you
 [9] previously submitted.
 [10] To date, you failed to notify me of the [11] accommodations
 that were offered were acceptable or present [12] any reasonable
 alternative accommodation.
 [13] In accordance with 5 USC 6307, the agency has the
 [14] discretion to advance up to thirty days, 240 hours of sick
 [15] leave to an employee who has a serious disability or
 [16] ailment.
 [17] In considering whether to advance sick leave, the
 [18] Department of Justice order on leave administration requires
 [19] the approving official to consider several factors,
 [20] including whether or not the employee can be expected to
 [21] return to work, or to return to duty.
 [22] Based on the medical documentation dated January [23] 31,
 2003, there is no indication you would be able to return [24] to
 duty as your doctor has indicated you remain totally [25] disabled.

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- [1] Excuse me, additionally, I have been informed that [2] on
 February 11, 2003, you requested the necessary forms from [3] the
 Safety Office to file Workman's Compensation claim. [4] Another
 factor which indicates you may not be returning to [5] work.
 [6] Based upon that information, I was unable, I was [7] unable to
 advance sick leave.
 [8] Q In making that decision that you had denied her
 [9] request for advanced sick leave, did you consider at all
 [10] Colleen's sex or gender?
 [11] A No.
 [12] Q I am going to show you what has been marked as
 [13] Colleen Exhibit 60.
 [14] Do you recognize that document?
 [15] A I remember the memo.
 [16] Q I'll represent to you that Colleen identified this
 [17] document in her deposition as a memo from her to you
 through [18] Steve Gagnon requesting sixteen hours of leave
 without pay [19] or advanced annual leave and it says handwritten
 at the [20] bottom there, denied per Warden Winn.
 [21] Do you see that?
 [22] A Correct. Yes.
 [23] Q Do you remember why, well before I get there, did
 [24] you direct the acting warden to deny this request?
 [25] A Yes.

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- [1] Q Do you remember why you decided that this request
 [2] should be denied?
 [3] A I was at a Warden's Conference and I remembered
 [4] that, if I remember correctly, I still didn't have the [5] proper
 documentation.
 [6] Q In making your decision to deny the request in [7] that
 January 10, 2003 memo, did you consider Ms.O'Donnell's [8] sex
 or gender?
 [9] A No.
 [10] Q Now do you remember when you became aware, if you
 [11] did, that Ms.O'Donnell was pursuing an EEO action against
 [12] the agency?
 [13] A I became aware an EEO action, I don't remember the
 [14] exact date. She was off duty, whether she was on, she must
 [15] have been on leave without pay.
 [16] She came to the training center, met with an EEO
 [17] counselor.
 [18] Q Do you remember when you became aware of that?
 [19] A That day she came in. I don't know the exact [20] date.
 [21] Q Okay. Do you remember who or how you learned that
 [22] she came in and met with an EEO counselor?
 [23] A A staff member, I can't remember, the staff member
 [24] came in and advised me that Colleen O'Donnell was at the
 [25] training center with Ken Nichols filing an EEO complaint.

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- [1] Q Do you know if that contact with you is [2] documented?
- [3] A I think I had the person write a memo.
- [4] Q Can you mark those two exhibits please? While the
- [5] reporter is marking those exhibits, I just want you to back
- [6] track briefly for a moment.
- [7] You stated before that you provided the first [8] note, the
- January 8, 2003 note to the psychiatrist here at [9] FMC Devens.
- [10] Do you remember what response, if any, the [11] psychiatrist
- had after reviewing the note?
- [12] A The psychiatrist from the Bureau of Prisons?
- [13] Q Yeah.
- [14] A Just basically, he needed more information to give
- [15] me input whether she can return to work or not or continue
- [16] without pay.
- [17] Whatever she was requesting at the time.
- [18] Q Could you mark this document as well? Did he
- [19] communicate that to you in writing?
- [20] A Yes.
- [21] MR. WILMOT: I am going to show you what has been
- [22] marked as Exhibit No. 36.
- [23] (Exhibit No. 36 marked for [24] identification.)
- [25] BY MR. WILMOT:

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- [1] Q Do you recognize that document?
- [2] A Yes I do.
- [3] Q Can you identify what it is?
- [4] A It's a memorandum for me from Dr. Fletcher [5] regarding
- Ms.O'Donnell and requesting additional [6] information.
- [7] Q And what does he say with regards to his review of
- [8] Dr.Milowe's note?
- [9] A Well, he's saying I reviewed the letter written by
- [10] Dr.Milowe of January 2003. In this letter there is a
- [11] non-specific diagnosis offered to a post traumatic stress
- [12] disorder and statement that she (Colleen O'Donnell) is
- [13] totally disabled which equally, of a general purpose nature.
- [14] The closing portion that offer speculation of a [15] complete
- reversal of her disability. If certain [16] environmental factors were
- modified, my professional opinion [17] is that the letter does not
- contain significant information [18] to support any facts alleged in
- the letter and that the [19] conclusion that the total disability is
- completely [20] reversible owing to environmental factors is
- inconsistent [21] with the practice of psychiatry.
- [22] I suggest that a formal review of medical records [23] and that
- an independent evaluation of Ms.O'Donnell by an
- [24] independent psychiatrist be initiated for the purpose of
- [25] establishing fitness of duty at FMC Devens.

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- [1] Q Now jumping back again into when you first learned
- [2] that Ms.O'Donnell met with an EEO officer. You stated that
- [3] you asked the person contacted you to put that in writing.
- [4] Do you know why you asked them to put it in [5] writing?
- [6] A Well, I already had put restrictions on both [7] parties and
- I wasn't upset that Ms.O'Donnell was filing an [8] EEO complaint. I
- didn't even know if the EEO complaint was [9] against me.
- [10] What concerned me that she came to the institution [11] on
- her own and Mr.Reynoso could have been in the area.
- [12] That's what I was upset about. He could have been [13] in a
- training class. He could have been around the training [14] center.
- He could have been in the camp.
- [15] And that violated the fifty yard rule. So far as [16] I was
- concerned. Whether she filed an EEO complaint, was
- [17] irrelevant to me whether it was against me or the
- [18] institution. That didn't bother me.
- [19] What bothered me was that she came in on her own.
- [20] MR. WILMOT: I am going to show you what has been
- [21] marked as Exhibit 34 and 35. Take a moment to review those
- [22] and let me know when you're finished.
- [23] (Exhibit Nos. 34 and 35 marked for [24] identification.)
- [25] BY MR. WILMOT:

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- [1] Q And the question I'm going to ask you is whether [2] or
- not these memos refresh your memory as to when you [3] learned
- Ms.O'Donnell met with an EEO officer?
- [4] A I remember the day, yeah.
- [5] Q What is the date you learned that Ms.O'Donnell [6] met
- with the EEO officer?
- [7] A I don't remember. The dates are -- March 19th. I [8] don't
- know if it was March, I'm sure it was March 19th. Do [9] I know for
- sure if it was March 19th? All I know is that [10] around that time,
- that did occur.
- [11] Q And what is the date in the two memos as to when
- [12] Ms.O'Donnell met with an EEO officer?
- [13] A March 19th at 1:00 p.m. Both memos indicate the
- [14] same day, just approximately, different times?
- [15] Q All right. And of what year?
- [16] A 2003.
- [17] Q Okay. And Exhibit 34 is a memo from whom?
- [18] A From Karen Parrott, the Employee Development
- [19] Manager.
- [20] Q Okay. And Exhibit 35 is a memo from whom?
- [21] A From Patrick Kelly, Employee Development
- [22] Specialist.
- [23] Q Okay. So I'm just referring you back to Exhibit [24] 60 of
- Colleen's deposition. When you made the decision to [25] deny
- her request for advance leave, was the fact that she

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[1] had seen an EEO officer or was involved in an EEO activity a
 [2] factor in your decision to deny her that leave?
 [3] A No.
 [4] Q Okay. I am going to show you what has been marked
 [5] as Colleen Exhibit 69.
 [6] Can you identify what that is?
 [7] A It's a request for leave from Colleen O'Donnell. [8] She
 requested leave without pay from July 30, 2003 to August [9] 11,
 2003.
 [10] Q What is the date of her request?
 [11] A July 28, 2003.
 [12] Q Okay. And what was your decision with regard to
 [13] that request?
 [14] A I approved that request on July 29, 2003 with a
 [15] stipulation that Ms.O'Donnell must provide an updated
 [16] doctor's note to me.
 [17] Q Do you remember why you had approved this request
 [18] without a doctor's note?
 [19] A No.
 [20] Q Do you remember whether or not this request came
 [21] before or after the mailroom incident?
 [22] A This request came after the mailroom incident.
 [23] Q Okay. And you testified earlier that following [24] the
 mailroom incident, you placed Ms.O'Donnell on [25] administrative
 leave, correct?

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[1] A Correct.
 [2] Q If I told you that Ms.O'Donnell testified that [3] this request
 was entered when her administrative leave that [4] she was placed
 on after the mailroom incident was about to [5] run, would that
 refresh your memory as to why you approved [6] this request for
 leave?
 [7] A I, I don't remember.
 [8] Q Now you say here that you wanted an updated
 [9] doctor's note from Ms.O'Donnell.
 [10] Did you receive one?
 [11] A No.
 [12] Q I am going to show you what has been marked as
 [13] Exhibit 70 from Ms.O'Donnell's deposition.
 [14] I'll represent to you that Ms.O'Donnell testified [15] that this is
 a request that she submitted August 11, 2003 [16] requesting leave
 or approved absence?
 [17] A Leave without pay.
 [18] Q What was your response to that request?
 [19] A I denied it. Ms.O'Donnell failed to follow my
 [20] instructions on July 29, 2003 by not providing an updated
 [21] doctor's note.
 [22] Q Okay. When you made the decision to deny this
 [23] request for leave, was the fact that Ms.O'Donnell is a
 [24] woman a factor in your decision?
 [25] A No.

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[1] Q Was the fact that Ms.O'Donnell had been engaged [2] in
 EEO activities here at the Bureau of Prisons a fact in [3] your
 decision to deny the request that is marked as Colleen [4] Exhibit
 70?
 [5] A No.
 [6] Q I think I'm almost done. Just give me a second. [7] I'm
 going to show you what is marked as Colleen Exhibit 71.
 [8] Do you recognize that document?
 [9] A I recognize, I recognize what was done at that [10] time to
 attempt to contact her and get medical information.
 [11] Q Can you identify what Colleen Exhibit 71 is?
 [12] A It's a letter to Colleen O'Donnell from Steve [13] Gagnon,
 Inmate Systems Manager. Numerous times tried to [14] contact
 you by telephone Tuesday, August 12 and Wednesday,
 [15] August 13 turned out to be unsuccessful. I did, however,
 [16] leave three messages for you to contact me.
 [17] This is to notify you that your request for [18] additional leave
 without pay has been denied as you failed [19] to provide the
 required medical update as directed on July [20] 29, 2003.
 Effective August 13, 2003 you have been placed on [21] AWOL
 status.
 [22] As you were advised in a letter dated June 23, [23] 2002,
 placement in AWOL status may lead to disciplinary [24] action up
 to and including removal.
 [25] Q Okay. Do you remember when Ms.O'Donnell returned

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[1] back to work following the date of this letter, August 13,
 [2] 2003?
 [3] A No.
 [4] Q Okay. Do you remember when Ms.O'Donnell provided
 [5] a medical update following this August 13, 2003 letter?
 [6] No.
 [7] Q I am going to show you what has been previously
 [8] marked as Colleen Exhibit No. 76 and identified in that
 [9] deposition.
 [10] Do you recognize that document?
 [11] A Yes I do.
 [12] Q Can you identify what that is?
 [13] A It's a letter from her doctor indicating what she
 [14] suffered from and what kind of vacation she was on from July
 [15] 2003 until present. And from July 2003 until September
 [16] 2003, it outlines the medication.
 [17] Q What is the date of that letter?
 [18] A It was dated December 16, 2003.
 [19] Q Between the letter from Steve Gagnon to
 [20] Ms.O'Donnell dated August 13, 2003 and marked as Colleen
 [21] Exhibit No. 71 and this letter from Colleen's doctor dated
 [22] December 16, 2003 and marked as Colleen Exhibit No. 76, do
 [23] you know whether Colleen provided the BOP any medical
 update [24] or documentation in the interim between these two
 letters?
 [25] A No, she didn't.

[1] Q Okay. Now you testified before as to Colleen was
 [2] ultimately disciplined with a warning placed in her file for
 [3] being AWOL, correct?
 [4] A Correct.
 [5] Q In making the decision to discipline her for being
 [6] AWOL, was the fact that Ms.O'Donnell was a woman, was that
 [7] a factor in your decision?
 [8] A No.
 [9] Q The fact that Ms.O'Donnell was engaged or [10] involved
 in EEO activities within the Bureau of Prisons, was [11] that a factor
 in your decision?
 [12] A No.
 [13] Q You gave some testimony as well, as to
 [14] Mr.Reynoso's discipline for the incident at Mirror Lake
 [15] with Ms.O'Donnell and you said that he was suspended
 [16] without pay.
 [17] Do you remember that testimony?
 [18] A Yes.
 [19] Q Okay. Whose responsibility is it within the [20] agency to
 actually dock pay from an employee's pay if he or [21] she is
 suspended without pay?
 [22] A That would be the Timekeeper.
 [23] Q The Timekeeper?
 [24] A Is the actual one who would key in. From my
 [25] understanding of the situation, it would be the Timekeeper

[1] situation.
 [2] Was the fact or, strike that. Was the fact that [3] Ms.O'Donnell
 is a woman, was that fact a factor in your [4] decision not to
 respond to Mr.Rizzitelli at that time?
 [5] A No.
 [6] Q The fact that Ms.O'Donnell had engaged in, strike [7] that.
 Okay.
 [8] You testified earlier today about discussions with
 [9] Ms.O'Donnell about assigning to the camp.
 [10] Do you remember that testimony?
 [11] A Yes.
 [12] Q Was Ms.O'Donnell ultimately assigned to the camp?
 [13] A No.
 [14] Q Just mark these two documents please.
 [15] COURT REPORTER: I think this is already marked.
 [16] MR. WILMOT: Which document is that? Okay. All [17] right.
 [18] COURT REPORTER: In there.
 [19] MR. WILMOT: Let me see.
 [20] COURT REPORTER: March 6th?
 [21] MR. WILMOT: March 6th, that's correct. It's [22] already in
 there as 25. So if we can switch. Make 38, 37.
 [23] COURT REPORTER: I'm sorry. 37 is already in. [24] I'll put
 38 on - 37 on this one. Yeah.
 [25] BY MR. WILMOT:

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[1] who would key in the dates you work, the dates you don't
 [2] work.
 [3] Q Is that an administrative function?
 [4] A That's an administrative function.
 [5] Q And it's safe to assume that is not a function [6] that you
 would perform?
 [7] A No.
 [8] Q Do you monitor whether or not such deductions are
 [9] made from employee's pay?
 [10] A No. I do not monitor that.
 [11] Q Okay. So your statement before that Mr.Reynoso
 [12] was not paid at the time of his suspension is based on the
 [13] fact that you suspended him without pay.
 [14] A I suspended him without pay, correct.
 [15] MR. WILMOT: Let's take a break quick.
 [16] MS. MCDONALD: Yes. Hurry.
 [17] (Brief recess.)
 [18] BY MR. WILMOT:
 [19] Q You testified before about the - and we covered [20] it
 just now again about the "delay" in responding to [21] Mr.Rizzitelli,
 his February 10, 2003 letter?
 [22] Do you remember that testimony?
 [23] A Right. Yes.
 [24] Q It says because we had not received authorization
 [25] from Colleen yet to speak with Mr.Rizzitelli about this

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[1] Q Okay. So again going back to your contact with
 [2] Mr.Rizzitelli, you stated that you did not respond to
 [3] Mr.Rizzitelli until after receiving, you identified this [4] already,
 after receiving Ms.Colleen O'Donnell's letter [5] dated March 4,
 2003 as marked as Colleen Exhibit 53.
 [6] And you stated earlier that you responded to [7] Mr.Rizzitelli
 after receiving this letter from Colleen. [8] Exhibit 53 from her
 deposition.
 [9] Do you know when you first responded to [10] Mr.Rizzitelli?
 [11] A On March 6, 2003.
 [12] Q Okay. So the document that is marked as Winn
 [13] Exhibit No. 25, is this your first contact with [14] Mr.Rizzitelli?
 [15] A Yes.
 [16] Q So two days after receiving Ms.O'Donnell's letter [17] that
 Mr.Rizzitelli was her counsel, you do, in fact, [18] contact
 Mr.Rizzitelli?
 [19] A Yes.
 [20] Q Do you remember when you received Ms.O'Donnell's
 [21] letter authorizing you to speak to Mr.Rizzitelli?
 [22] A March 4, 2003.
 [23] Q Do you remember what time of day you received
 [24] that?
 [25] A At 1:33. Well, it was sent down to Human

[1] Resources, so I probably got it a little after that.
[2] MR. WILMOT: Okay. And I've marked her as Exhibit [3] 37,
another document.
[4] (Exhibit No. 37 marked for [5] identification.)
[6] BY MR. WILMOT:
[7] Q Do you recognize that document?
[8] A Yes.
[9] Q Can you identify what it is?
[10] A It's dated March 21, 2003 to Mr. Rizzitelli from [11] me.
[12] Q Okay. So you did have contact with Mr. Rizzitelli
[13] concerning Ms. O'Donnell after she finally authorized you to
[14] speak to him.
[15] A Yes.
[16] Q Okay. You testified early this morning that
[17] Ms. O'Donnell was the only person that you had out on admin
[18] leave or administrative leave, and was required to call into
[19] her supervisor during that leave.
[20] Do you remember that?
[21] A Yes.
[22] Q Why did you require Ms. O'Donnell to call into her
[23] supervisor during her administrative leave?
[24] A Because during that period of time, we, meaning
[25] myself, Ms. Lord and Mr. Gagnon, attempted on numerous

[1] MS. MCDONALD: Highly unlikely but -
[2] MR. WILMOT: And pursuant to our protective order, [3] you know, there was a lot of testimony here today about [4] other employees that would be considered confidential under [5] that protective order so-.
[6] You know, would you be agreeable to our just [7] marking the entire deposition as confidential or does it [8] need to be specific pages?
[9] It would be easier if we could stamp the first [10] page confidential.
[11] MS. MCDONALD: What's in place? Reynoso, isn't [12] that it?
[13] MR. WILMOT: That would be it and of course, your
[14] client.
[15] MS. MCDONALD: Yeah, that's fine.
[16] MR. WILMOT: All right. Thank you.
[17] (Off the record at 4:31 p.m.)

[1] occasions to contact Colleen O'Donnell and we cannot get a
[2] response through letters, telephones, fax machines, so the
[3] stipulation, I did stipulate that she call in so we can [4] provide
her information.
[5] Whether it be a doctor's note or further leave [6] without pay
requests and that's why we did it.
[7] Q Okay. Was the fact that Ms. O'Donnell was a [8] woman,
was that a factor in your decision to place that [9] requirement on
her?
[10] A No, it was strictly based on communication.
[11] Q Was the fact that Ms. O'Donnell was involved or
[12] engaged in EEO activities within the Bureau of Prisons, a
[13] factor in your decision to place that requirement on her?
[14] A No.
[15] Q Was the fact that Ms. O'Donnell had previously
[16] requested a work accommodation a factor in your decision to
[17] place a requirement on her?
[18] A No.
[19] MR. WILMOT: Okay. I guess that's it for me.
[20] MS. MCDONALD: I don't have any more right now. [21] But
I would like to reserve my right to recall the Warden if [22] I have
not received those documents which you intend to [23] provide me
with.
[24] I'm probably finished but just in case.
[25] MR. WILMOT: Okay.

[1] CERTIFICATE [2] COMMONWEALTH OF MASSACHUSETTS)
) SS. [3] COUNTY OF SUFFOLK)
[4] I, Marilyn D. Franklin, a Court Reporter and [5] Notary Public, within and for the Commonwealth of [6] Massachusetts, do hereby certify that there came before me [7] on this 15th day of September, 2005, the person hereinbefore [8] named, who was by me duly sworn to tell the truth, the whole [9] truth, and nothing but the truth, concerning and touching [10] the matter in controversy in this cause; that he was [11] thereupon examined upon his oath, and his examination [12] reduced to typewriting, under my direction, and that this [13] deposition transcript is a true and accurate record of the [14] testimony given by the witness.
[15] I further certify that I am not related to any of [16] the parties hereto or their counsel, and that I am in no way [17] interested in the outcome of said cause.
[18] Dated at Boston, Massachusetts, this 5th day of [19] day of October, 2005.
[21]
Marilyn D. Franklin
[22] NOTARY PUBLIC
My Commission Expires:
[23] August 18, 2011

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[1] CORRECTION SHEET
[2] DEPOSITION OF DAVID L. WINN [3] PAGE NO. LINE NO.
SUGGESTED CORRECTION [4]

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[1] SIGNATURE OF WITNESS:
[2] I have read the foregoing transcript and the same [3] contains
a true and accurate recording of my answers to the [4] questions
therein set forth, subject to the change and/or [5] correction
sheet(s) attached.
[8]
[9] Deponent